Facsimile Coversheet

File:

To: Diavik Dist List
From: Peter Lennie-Misgeld

Fax: Pages: 3

Phone: Date: September 26, 2006

Re: Diavik Pre-hearing conference agenda

CC:

☐ Urgent  ☐ For Review  ☐ Please Comment  ☐ Please Reply
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● Comments:

Diavik Pre-hearing conference agenda included.
September 12, 2006

To: Diavik Distribution List via Fax

Dear Sir/Madam:

The following parties have confirmed their participation for the pre-hearing conference:

- Diavik Diamond Mines Inc. (DDMI)
- Environment Canada (EC)
- Lutselke Dene First Nation (LKDFN)
- Yellowknife Dene First Nation (YKDFN)
- Department of Fisheries and Oceans (DFO)
- Deninu Kue First Nation (DKFN)
- North Slave Metis Alliance (NSMA)
- Northwest Territory Metis Nation (NWTMN)
- Department of Indian and Northern Affairs (DIAND)

**Diavik Pre-Hearing Conference Agenda**

1) Opening remarks and introductions
2) Intervener witnesses/representatives
3) Time required for presentations by intervenors
4) Hearing organization/format
5) Intervention organization/format
6) Board process issues
7) Motions/legal issues

The pre-hearing conference will run from 9:00-12:00am via tele-conference. Persons in Yellowknife can participate in the teleconference at the MVLWB Boardroom, 7th Floor, YK Center.

Teleconference information is as follows:
Dial in number: 1-888-337-8477
PIN: 4911#

If you have any questions regarding this letter, please contact Peter Lennie-Misgeld at (867) 669-0506 or email peter@mvlwb.com.

Yours sincerely,

[Signature]
Zabey Nevitt
Executive Director
### FIRST NATIONS/ABORIGINAL ORGANIZATIONS

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<td>Wekweeti Community Government</td>
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<td>INAC- Water Resources Division</td>
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<td>Eric Yaxley</td>
<td>INAC – Environment and Conservation</td>
<td>669-2701</td>
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<td>Anne Wilson</td>
<td>Environment Canada</td>
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<td>Dave Balint</td>
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### OTHERS

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<td>Kitikmeot Inuit Association</td>
<td>867-982-3311</td>
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<tr>
<td>John McCullum</td>
<td>EMAB</td>
<td>766-3693</td>
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<tr>
<td>Gord Macdonald</td>
<td>DDMI</td>
<td>669-9058</td>
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<tr>
<td>John Donihee</td>
<td>WLBL</td>
<td>403 282-6596</td>
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If there is an error in our contact, please notify our office.
Facsimile Coversheet

File:

To: Diavik Dist List
From: Peter Lennie-Mingeld

Pages: 3

Date: September 26, 2006

Rel: Diavik Pre-hearing conference agenda

Comments:

Diavik Pre-hearing conference agenda included.

Box 32, Wekweel, NT X0K 1W0
Tel: 867-713-2500 • Fax: 867-713-2502 • www.wlwb.ca
Group Send Report

Page : 001
Date & Time: 26-Sep-2006 16:18
Line 1 : +8673736610
Line 2 :
Machine ID : MVLWB

Job number : 746
Date : 26-Sep 15:29
Number of pages : 003
Start time : 26-Sep 15:29
End time : 26-Sep 16:18

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52 18673703209
57 6692720
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Fax numbers
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8699201
818679823311
7663693
8699058
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Unsuccessful nbrs. Pages sent

One touch numbers
26 18673715406 000
63 8734021 000
Hi Zabey, et al

I am afraid I will not get the time to find out what “NSMA” thinks of the possibilities of post-hearing processes, however, I am willing to offer some personal comment, based on personal experience. I am no lawyer, and willing to take correction/comments on any of this from anyone with more experience or knowledge. In particular, I’d like to hear John Donihee’s opinion….. (since I know he provided legal opinion/advice to the Yukon Water Board on the compensation topic).

I see that there are a number of issues that remain contentious at this late date, despite the very early application from DDMI and much effort at resolving some of the issues. I suspect that the four days of hearing will not get us much closer to a consensus. I expect that the Board will use the hearing process to question participants and evaluate their information. If the Board is satisfied that they have enough good quality information to do so, they will make a decision.

If there is not enough information for a decision at the end of the scheduled hearings, I think there are a number of options for post-hearing processes. The public hearing can be adjourned to a later date, and parties can be directed by the Board to provide specific information in a specific format prior to re-convening the hearing. I think it is also sometimes possible to re-convene the hearing as a written hearing instead of a public hearing.

If needed information is going to take a long time to develop or evaluate, and the project is already in progress (as too often is the case) the Board is in an uncomfortable spot….. To help minimize the likelihood of judicial review, they might want to establish an ad hoc working group to deal with specified issues and try to develop a consensus recommendation to the Board. I believe this is what has been done with the Diavik Technical Committee, the BHP Interim Closure and Reclamation Plan Working Group, the Miramar Con Mine closure working group, etc.

While these working groups can, with proper guidance (mandate, roles and responsibilities, scope) and facilitation, be of substantial assistance to the participants and the Board I do not think this process meets the statutory requirements of the Waters Act, the MRVMA, or the Consultation obligations of Canada. I think it is very risky, and arguably illegal, for the Board to issue “contingent” licenses before they have the information they need to meet their statutory obligations. The Board is specifically prohibited, by section 14 of the NWTWA from issuing a license before they “satisfied” that waste will be disposed of properly, satisfactory compensation will be paid, and the applicant has the financial backing to complete the project, mitigate environmental (biophysical and socio-cultural) impacts, and RESTORE the site (so that means the closure objectives and criteria must be known, and accepted….. right?). It is difficult to see how the Board can be satisfied of something when it is admittedly lacking adequate information. I also don’t see how the information can be made available without intervener funding….. I am quite certain that the NWTWA was NOT intended to be founded on Board Members’ level of trust, faith or optimism level, but rather intended to be based on their well informed and critical evaluation and satisfaction with the validity, reliability, and credibility of the information provided during the proceedings.

It is obviously unfair to an intervener to have a statutory time limit on their ability to make a compensation claim which ends before they have the information on which they would have based the claim (ie: closure objectives, size of project, life of project, location, duration and magnitude of effects, etc.). It is also patently unfair for a project to be changed after an IBA, Environmental, or Socio-economic agreements have been signed, unless the agreements are also updated to match the change in the project. So, no matter which post-hearing process is used, there needs to be a functional mechanism in place by which the Board (or the Minister?) can satisfy itself that adequate consultation, accommodation and compensation have in fact occurred (NWTWA 14(4)). Whatever process is used to approve environmental management plans, monitoring programs, waste discharge criteria, or reports must be considered a “proceeding”, and be
“for approval of the Board”, subject to the requirements of public notice and a realistic opportunity for interventions. Funding would be nice, too. Alternatively, costs could be claimed against the proponent, as part of a compensation claim (costs are provable damages) under NWTWA section 14(4) and 14(5). If the board did not allow an Aboriginal intervener to claim damages (i.e., expenses to prevent, mitigate, or obtain compensation) for interference with their Aboriginal or Treaty rights, then that would mean that constitutionally protected Aboriginal Rights to lands and waters are not protected under the NWTWA, and if that was true, that would render the Act constitutionally invalid, and put every license issued under it at risk of judicial review and nullification.

Sheryl Grieve B.Sc.
Environment and Resource Manager
North Slave Metis Alliance
Box 2301, Yellowknife. X1A 2P7
lands@nsma.net

-----Original Message-----
From: Peter Lennie-Misgeld [mailto:peter@mvlwb.com]
Sent: Tuesday, September 12, 2006 3:56 PM
To: Zabey Nevitt; donihee@telusplanet.net; Anne Wilson; Bart Blais; Charlotte Henry; Chris Heron; 'Dave Balint '; 'Dora Enzoe'; Doug Crossley; Eric Denholm; 'Gord MacDonald'; Jason McNeill; John McCullum; Kathleen Racher; 'Kelly Cott'; Loretta_Ransom@gov.nt.ca; Lorne Napier - Rae Edzo Metis Local ; Monica Krieger; MVLWB Permit Email (MVLWB Permit); Nathen Richea ; Patty Ewashchuk; Rachel Crapeau; 'Sheryl Grieve'; Stanley Anablak; Tli Cho Lands Protection Department; 'Tony Pearse'; Valerie Meeres; 'Stephen Ellis'; 'Don MacDonald'; 'Ed Hornby'; 'Geoff Clarke'; 'Georgina Biscaye - Deninu K'ue First Nation'; 'Louie Azzolini-YKDFN'; 'Orissa Forest'; 'patric simon'
Subject: WLWB Diavik pre-hearing conference- September 29, 2006
Importance: High

Pre-hearing conference letter attached.

Peter Lennie-Misgeld
Senior Regulatory Officer
Mackenzie Valley Land and Water Board
Phone (867) 766-7469
Fax (867) 873-6610

10/23/2006
FW: NSMA pre-hearing participation and issues

-----Original Message-----
From: EMAB [mailto:Emab1@arcticdata.ca]
Sent: Tuesday, September 26, 2006 10:06 AM
To: Peter Lennie-Misgeld
Subject: Fw: NSMA pre-hearing participation and issues

as discussed

Cheers

John

----- Original Message ----- 
From: "Sheryl Grieve" <lands@nsma.net>
To: <plennie@mvlwb.com>
Cc: "'Keith Hamilton'" <keith@nsma.net>; "'Bill Enge'" <billenge@nsma.net>; 
"'Brad'" <bradenge@nsma.net>; "'val'" <valerie@nsma.net>; "'zabey nevitt'" 
<zabey@tlicho.com>; "'Tony Pearse'" <tpearse@gulfislands.com>; "'Rachel 
Crapeau'" <rachelc@ykdev.com>; "'Monica Krieger'" <wildlife@lutselke.com>; 
"'Michele LeTourneau'" <emab3@arcticdata.ca>; "'marc'" 
<marc_whitford@gov.nt.ca>; <lutselke_wle@yahoo.ca>; "'Luciano Azzolini 
(E-mail)"' <TerraFirma@theedge.ca>; "'Lawrence Goulet'" 
<lgoulet@arcticdata.ca>; "'Johnny Weyallon (E-mail)'" 
<JWeyallon@tlicho.com>; "'Janell Dautel'" <janell@dcab.ca>
<Gordon.MacDonald@diavik.com>; "'George Mackenzie'" <gmackenzie@tlicho.com>

"'Florence Catholique'" <fcatholique@msn.com>; <Emab1@arcticdata.ca>;
<Erik.Madsen@diavik.com>; "'Eddie Erasmus'" <eerasmus@tlicho.com>; "'Doug
Attached letter includes two page list of issues - attached.

Sheryl Grieve B.Sc.
Environment and Resource Manager
North Slave Metis Alliance
Box 2301, Yellowknife. X1A 2P7
lands@nsma.net
September 22, 2006

Mackenzie Valley Land and Water Board
7th Floor, 4910-50th Ave.
Yellowknife, NT.
P.O. Box 2130. X1A 2P6
Phone (867) 669-0506
Fax (867) 873-6610

Attention: Peter Lennie-Misgeld peter@mvlwb.com

Re: Pre-Hearing Conference for N7L2-1645 / MV2005L2-0009 renewal application.

The North Slave Métis Alliance (NSMA) hereby confirms its intention to participate in the prehearing conference on September 29th, 2006, in the Mackenzie Valley Land and Water Board Boardroom, regarding the renewal of Diavik Diamond Mine’s class A water license.

However, NSMA’s participation in the pre-hearing conference must be without prejudice to our formal intervention, which is unlikely to be complete prior to the legal deadline. NSMA has not yet received participant funding to participate in this public license renewal hearing, and lacks the capacity to participate fully.

The information requested in your September 12 letter is attached, to the best of our capacity.

Sincerely,

Sheryl Grieve, B.Sc.
Email: lands@nsma.net
Environment and Resources Manager
North Slave Métis Alliance
Phone (867) 873-NSMA (6762) ext. 26
Fax (867) 669-7442

Attachments - 2 pgs

Ph: (867) 873-6762       Fax: (867) 669-7442       EMail: general@nsma.net
PRELIMINARY OR LEGAL ISSUES:
- Participant funding – as per NWT Environmental Audit recommendation # 39 (out of ~80 million tax revenues to Gov each year, nothing for FN?)
- Status of Ammonia Amendment = Process of issuing exemptions to license requirements and consultation
- Amendments to license in between hearings
- Regulatory and enforcement capacity
- CIMP (CEAMF) needs to be implemented – or something used in the interim.
- Regulatory gaps - ability of MVRMA to stretch to fit.....?

LIST OF ISSUES:
- Adequacy of consultation
- Administrative issues
  - Plan approvals
  - Reports acceptable or not
- Changes in mine plan since environmental assessment
  - rate of water use and discharge
  - rate of explosives use
- Compensation
  - Substantive changes to life of mine plan (longevity of benefits, rate of resource depletion, and/or total resource exploited) require re-negotiation of IBA’s
    - underground mining was not supposed to start until 2014 (8 years early = 8 years less project employment and IBA???)
    - maximum of 1.9 million tons per year from 2002 till 2025 = 43.7 million tons of kimberlite max from 4 pipes (estimated only 37.4 million tons) – what now?
    - average 4 carats per ton = 174.8 million carats total – what estimated now?
  - Post- Closure compensation has not yet been evaluated
- Adequacy of follow up programs to confirm EA predictions and effective mitigation
  - Airborne contaminants ending up in water
  - Water license limits for regulated parameters
  - Water treatment only for TSS, pH, and metals. Chloride, nitrate not identified as issues.
  - AEMP
  - Loadings vs. concentrations
  - Adaptive management thresholds
- Adequacy of closure plan.
- Security calculations
- Term of license
- Integration and coordination of all regulatory requirements, simplified reporting (as recommended by NWT Audit #10) to include all mitigative and monitoring requirements, and establish performance based criteria;
  - Fisheries Authorizations
  - Explosives permits
  - Licenses of occupation
  - Land leases
- Environmental agreement
- Socioeconomic agreement
- IBA (NWT Audit recommendation #11)
- Other?

➤ LIST OF WITNESSES / TIME:
- Sheryl Grieve and Val Meeres will attend the pre-hearing conference, but will probably not be prepared to speak at any length.
- Experts to be relied on at public hearing to be arranged, and subject to funding. Estimate one to two hours.

➤ ORGANIZATION OF HEARINGS:
- Most effective organization for us would be by topic.

➤ OTHER MATTERS:
- To be determined…….
Pre-hearing conference letter attached.

Peter Lennie-Misgeld
Senior Regulatory Officer
Mackenzie Valley Land and Water Board
Phone (867) 766-7469
Fax (867) 873-6610

9/20/2006
September 12, 2006

To: Diavik Distribution List via Fax

Dear Sir/Madam:

**Diavik Pre-Hearing Conference**

The Wek'eezhii Land and Water Board's ('The Board') revised work plan dated July 13, 2006 provided for a pre-hearing conference to be held on October 30th, 2006. Given the outcome of recent workshops on ammonia and the AEMP, the Board has determined that an early effort to identify hearing issues is warranted. The Board has therefore decided to advance the date of the pre-hearing conference in this proceeding to **September 29th, 2006**. If necessary the Board will consider an additional pre-hearing conference on October 30th. A decision on the need for that meeting will be announced to the parties in October.

The Board notes that an earlier (September) pre-hearing conference will allow potential interveners to better understand the hearing process and provide clarity on the issues to be discussed at the hearing. This discussion should be helpful for potential interveners in the preparation of their written interventions before the submission deadline of October 23, 2006.

In preparation for the pre-hearing conference (PHC), please provide the information outlined below:

- Indicate whether you anticipate the need for the Board to address any preliminary or legal issues before the public hearing and if so outline them in detail for discussion at the PHC;
- Provide a list of issues that you intend to address in your evidence at the public hearing;
- List the witnesses or representatives who will be making presentations on your behalf at the public hearing, outline their expertise, and the nature of their evidence;
- Indicate how much time you will need to present your intervention (all of your witnesses) at the public hearing;

.../2
- 2 -

- Be prepared to discuss your preferred options for the organization of the hearing, [i.e. by party presenting whole intervention; by topic area (e.g. ammonia, AEMP, etc)].
- Any other matters or clarification related to the conduct of the hearing which you would like addressed before the public hearing.

Please confirm your attendance and submit the requested information to the Board by **12:00 noon, September 22, 2006** at the following address:

Mackenzie Valley Land and Water Board  
Box 2130  
7th Floor - 4910 50th Avenue  
Yellowknife, NT X1A 2P6  
Phone: (867) 669-0506  
Fax: (867) 873-6610  
Email: peter@mvlwb.com

Once the requested information has been received from pre-hearing conference participants, Board staff will circulate the information and generate an agenda for the conference.

The pre-hearing conference will run from 9:00 - 12:00am via tele-conference. For persons in Yellowknife, you can participate in the tele-conference at the MVLWB Boardroom, 7th Floor, YK Center.

If you have any questions regarding this letter, contact Peter Lennie-Misgeld at (867) 669-0506 or email peter@mvlwb.com.

Yours sincerely,

[Signature]

Zachary Ne vít  
Executive Director
**Date:** September 12, 2006

**Application MV2005L2-0009 (N7L2-1645)**

**DISTRIBUTION LIST by Fax**

**Diavik Distribution List**

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*If there is an error in our contact, please notify our office.*
Facsimile Coversheet

File: MV2005L2-0009

To: Diavik Distribution List
From: Peter Lennie-Misgeld
Fax: Pages: 4

Phone: Date: September 12, 2006

Re: Diavik Pre-Hearing Conference

CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply
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Comments:

Letter regarding Diavik pre-hearing conference on September 29, 2006 attached.
Facsimile Coversheet

File: MV2006L3-0009
To: Diavik Distribution List
From: Peter Leanie-Misgeld
Fax: Pages: 4
Phone: Date: September 12, 2006

Re: Diavik Pre-Hearing Conference

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• Comments:

Letter regarding Diavik pre-hearing conference on September 29, 2006 attached.

Box 32, Wekwehl, NT X0E 1W0
Tel: 867-713-2500 • Fax: 867-713-2502 • www.wlwb.ca
Group Send Report

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Line 2 :
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End time : 13-Sep 15:27

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Facsimile Coversheet

File: MV2005L2-0009
To: Diavik Distribution List
From: Peter Lennie-Misgeld
Pages: 1

Date: September 12, 2006
Phone: Diavik Pre-Hearing Conference
Re: CC:

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Comments:

Letter regarding Diavik pre-hearing conference on September 29, 2006 attached.
The document accompanying this transmission contains information intended for a specific individual and purpose. The information is private, and is legally protected by law. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or taking of any action in reference to the contents of this facsimile is strictly prohibited by law. If you receive this communication in error, please notify us immediately by telephone and return the original by regular mail.

● Comments:


Diavik pre-hearing conference begins at 9:00 am and runs to 12:00 noon.

dial in phone number: 1-888-337-8477

PIN: 4911#
Diavik pre-hearing conference begins at 9:00 am and runs to 12:00 noon.

dial in phone number: **1-888-337-8477**

**PIN:** **4911#**

Peter Lennie-Misgeld  
Senior Regulatory Officer  
Mackenzie Valley Land and Water Board  
Phone (867) 766-7469  
Fax (867) 873-6610
Facsimile Coversheet

File: MV2005L2-0009

To: Diavik Dist List

From: Peter Lennie-Misgeld

Phone: Pre-Hearing Conference

Date: September 26, 2006

Re: Pre-Hearing Conference

Comments:

Diavik pre-hearing conference begins at 9:00 am and runs to 12:00 noon.
dial in phone number: 1-888-337-8477
PIN: 4911#

Box 33, Wékweé, NT X0E 1W0
Tel: 867-713-2500 • Fax: 867-713-2502 • www.wlwb.ca
Group Send Report

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If there is an error in our contact, please notify our office.
From: Peter Lennie-Misgeld [peter@mvlwb.com]
Sent: Monday, September 25, 2006 8:15 AM
To: Zabey Nevitt; donihee@telusplanet.net; Anne Wilson; Bart Blais; Charlotte Henry; Chris Heron; 'Dave Balint'; 'Dora Enzoe'; Doug Crossley; Eric Denholm; 'Gord MacDonald'; Jason McNeill; John McCullum; Kathleen Racher; 'Kelly Cott'; Ken Dahl; Loretta_Ransom@gov.nt.ca; Lorne Napier - Rae Edzo Metis Local; Monica Krieger; MVLWB Permit Email (MVLWB Permit); Nathen Richea; Patty Ewashchuk; Rachel Crapeau; 'Sheryl Grieve'; Stanley Anablak; Tli Cho Lands Protection Department; 'Tony Pearse'; Valerie Meeres; 'Stephen Ellis'; 'Don MacDonald'; 'Geoff Clarke'; 'Georgina Biscaye - Deninu K'ue First Nation'; 'Louie Azzolini-YKDFN'; 'Orissa Forest'; 'patric simon'
Subject: Diavik Pre-hearing conference comments
Importance: High

PHC comments attached, agenda to follow shortly.

Peter Lennie-Misgeld
Senior Regulatory Officer
Mackenzie Valley Land and Water Board
Phone (867) 766-7469
Fax (867) 873-6610
Re: Pre-hearing conference

Dear Zabey,

Please find attached the information requested in the Wek’ëezhii Land and Water Board’s letter of September 12, 2006.

The Environmental Monitoring Advisory Board (EMAB) looks forward to a positive and constructive session on September 29. In general we believe the MVLWB Rules of Procedure are fine and recommend that the WLWB follow these for the hearing.

Please contact John McCullum at the EMAB office if you require further clarification.

Sincerely

Doug Crossley
Chair

Cc: EMAB members (by email)
Parties to the Environmental Agreement
EMAB Pre-hearing conference information

1) Preliminary or legal issues
a. Scope of intervention – EMAB will largely address the clauses in the water licence but will also point to management issues that have arisen during the term of licence:
   - Process for re-designing AEMP and status of revised AEMP submitted by Diavik Diamond Mines (DDMI)
   - Existing exemptions to licence and procedure for granting exemptions
   - Determination of compliance – what does this involve?
   - Changes to licence between hearings – process, criteria
   - Status of outstanding reports & follow up by MVLWB/WLWB
   - Changes to schedules
   - Directives, responses and follow up
   - lack of internal technical capacity
b. Filing expert reviews – EMAB submitted three expert reviews in its initial comments on DDMI’s water licence application. Due to issues regarding cost and availability of the consultants involved EMAB requests that the Board give direction that these reports be recognized as submitted by experts in their fields and that any questions regarding the reports be asked and answered in writing prior to the hearing. These written questions and answers would be entered as an exhibit at the hearing.
c. Intervener Funding – EMAB has continuously raised the issue of lack of intervener funding for Aboriginal Parties and other potential participants in these proceedings. The recently released Northwest Territories Environmental Audit 2005 required under Part 6 of the Mackenzie Valley Resource Management Act (MVRMA) recommended the establishment of participant funding under the MVRMA as did a previous report by the National Round Table on Environment and Economy. We are concerned that the inability of key stakeholders to present evidence and to test the evidence presented due to lack of access to resources could compromise the fairness of the hearings (see attached letter referencing the position of the Alberta Public Utilities Board on this matter). EMAB requests that:
   - the Board make recommendations to the Minister regarding the need for intervener funds for water licence proceedings, including renewal hearings
   - The Board make recommendations to the Minister to provide authority to the Board to award costs from hearings, including advancing of funds.
   - DDMI provide funds to ensure full and effective participation in the hearings by Aboriginal Parties

2) Issues:
- Intervener funding
- Ammonia management and ROA including process for development of Ammonia Discussion Paper and screening criteria for treatment and management options
- AEMP (various)
  - North-South Consultants review of existing AEMP
  - Baseline data and initial evaluation
  - Process for development of revised version; ongoing updates and evaluation criteria
    - Comments on submitted draft

Environmental Monitoring Advisory Board
PO BOX 2577 YELLOKNIFE, NT X1A 2P9
Ph (867) 766 – 3682 Fax: (867) 766 – 3693 E-mail: emab3@arcticdata.ca
- Interpretation of data
- Dust & air quality (SENES Consultants review)
- Review and revision of annual reports (including previous reports that required corrections)
- Integration of results from other related monitoring
- How DDMI intends to address Aboriginal involvement commitments from EA
- Adaptive management in relation to results
  - Abandonment and restoration
    - Need for detailed update (SENES Consultants review and recommendations)
    - Possible implications for security deposit recalculation
- Ongoing problems over interpretation of licence and directives
  - Ammonia Discussion Paper including ToR
  - Goal of Record of Agreement
  - AEMP licence requirements
  - WLWB directive on AEMP
  - Exemptions
- Term of licence

3) Witnesses
   - Elaine Irving, North-South Consultants – AEMP (if Board agrees under item 1(c) above this could be tabled with written questions and answers and witness may not appear)
   - Randy Knapp, SENES Consultants – abandonment and restoration (if Board agrees under item 1(c) above this will be tabled with written questions and answers and witness will not appear)
   - Dan Hrebenyuk, SENES Consultants – dust monitoring and air quality (if Board agrees under item 1(c) above this will be tabled with written questions and answers and witness will not appear)
   - Witness panel of EMAB member(s) and staff and legal counsel - administration of licence

4) Presentation time – depends on Board decision regarding written questions/answers on expert reviews; for full presentations, not including questions and answers, estimate 2 to 3 hours

5) Organization of hearing – follow Order of Presentation in Section 92 of Rules of Procedure

6) Other clarifications
   - What documents is DDMI relying on in support of its application, and have there been any amendments or additions to the application?
   - Status of Record of Agreement and any changes eg. Hyalcella & whitefish; also status of outstanding reviews under ROA
   - Status of draft revised AEMP
   - Status of outstanding reports (see letter of August 31, 2006 to WLWB from EMAB)
   - Will the draft Ammonia Management Plan scheduled for submission on October 4 be part of the application
   - Process for review and/or approval of reports that are also covered in Fisheries Authorizations or other processes
   - How do DDMI and the Board believe the commitments by DDMI in the Environmental Agreement related to Aboriginal involvement and training with respect to the AEMP can be incorporated or linked to the AEMP
September 20, 2006

E-mail: emab1@arcticdata.ca

Environmental Monitoring Advisory Board
2nd Floor, 5006 Franklin Avenue
Yellowknife, NT X1A 2P9

Attention: John McCullum,
Executive Director

Dear John:

Re: Hearing Submission on Participant Funding

Here is some text in support of your request that the Board recommend to Canada that it be given jurisdiction to award intervener costs:

"Section 83 of the Mackenzie Valley Resource Management Act requires the Federal Minister to consult with the Board with respect to any amendment to the Act.

EMAB recommends that the Board request the Minister consult with it regarding the necessary amendments to give the Board jurisdiction over costs. Alternatively, we request that the Board recommend to the Minister that a participant funding program be developed and funded by the Federal government.

Providing funding or intervener costs is critical to enable the Board to carry out its mandate. Pursuant to Section 9.1 of the Mackenzie Valley Resource Management Act, the purpose of the Board is "to enable residents of the Mackenzie Valley to participate in the management of its resources for the benefit of the residents and of other Canadians". Therefore, participation by the public is at the very core of the Board's purpose.

Intervener funding is also important to provide a level playing field in the hearing process. Funding allows interveners to access legal and technical support to effectively and efficiently put forward their position and to test the evidence of the Applicant. Applicants are normally very well resourced and can marshal a significant
effectively participate in the proceeding and to enable the Board to adjudicate fairly on applications for development, EMAB believes it is essential for the Board to have the jurisdiction to award intervener funding.

Yours truly,

ACKROYD LLP

KARIN E. BUSS
KEB/cg
Hi Folks,

After chatting with Peter this morning I should clarify that under 1b) of its submission EMAB is requesting written questions/answers on our technical reviews as a replacement for bringing our reviewers to the hearing. By not bringing the reviewers to the hearing for direct testimony we would save substantial costs and address some potential availability issues with those dates.

Cheers

John

----- Original Message -----  
From: Peter Lennie-Misgeld  
To: Zabey Nevitt ; donihee@telusplanet.net ; Anne Wilson ; Bart Blais ; Charlotte Henry ; Chris Heron ; 'Dave Balint ' ; 'Dora Enzoe' ; Doug Crossley ; Eric Denholm ; 'Gord MacDonald' ; Jason McNeill ; Kathleen Racher ; 'Kelly Cott' ; Ken Dahl ; Loretta_Ransom@gov.nt.ca ; Lorne Napier - Rae Edzo Metis Local ; Monica Krieger ; MVLWB Permit Email (MVLWB Permit) ; Nathen Richea ; Patty Ewashchuk ; Rachel Crapeau ; 'Sheryl Grieve' ; Stanley Anablak ; Tli Cho Lands Protection Department ; 'Tony Pearse' ; Valerie Meeres ; 'Stephen Ellis' ; 'Don MacDonald' ; 'Geoff Clarke' ; 'Georgina Biscaye - Deninu K'ue First Nation' ; 'Louie Azzolini-YKDFN' ; 'Orissa Forest' ; 'patric simon'
Cc: Karin Buss
Subject: clarification of EMAB request

Page 2 was missing from the attachment included in EMAB's PHC comments I sent out this morning, the complete version is attached.

Peter
September 22, 2006

Mr. Zabey Nevitt
Wek’èezhii Land and Water Board
c/o Mackenzie Valley Land and Water Board
7th Floor – 4910 50th Avenue,
PO Box 2130
Yellowknife, NT X1A 2P6

Re: Diavik Pre-Hearing Conference – Information Request

Diavik Diamond Mines Inc. (DDMI) would like to provide the following information as requested in your letter of September 12, 2006.

1. Preliminary or legal issues: DDMI does not anticipate raising any preliminary or legal issues that the Board would need to address before the public hearing. The application before the Board is the Application filed on August 8, 2005 for renewal of the Water License. We emphasize that the Board has indicated in the Renewal Work Plan that it will consider changes to terms and conditions of the Water License if reviewers submit strong rationale supporting their recommended changes. The Board has also indicated that it will consider progress with respect to both the AEMP and the Ammonia-ROA at the hearing. The Water License requires the ongoing development and approval of a number of plans such as the AEMP, the Ammonia Management Plan, and the Closure and Reclamation Plan. These plans are subject to regular review under the Water License, and the completion of the reviews and approval of the plans is not a pre-condition for the renewal of the Water License.

2. Issues DDMI intends to address: In DDMI’s opening presentation we intend to:
   • present an overview of the mining operation and a summary of the renewal application,
   • provide an overview of the current status of terms and conditions of the License,
   • note our request for a 15 year license term,
   • present our recommendation and rationale for the total ammonia effluent quality criteria, and summarize the Ammonia Management Plan,
   • respond to any changes to the terms and conditions of the Water License proposed in the written interventions,
• provide an overview of the Aquatic Effects Monitoring Program.

3. **List of representatives and witnesses:** DDMI intends to have a Panel composed of company representatives, assisted by counsel as follows:

   • Mr. Gord Macdonald is DDMI’s lead representative. Mr. Macdonald is responsible for DDMI’s Water License renewal application. Mr. Macdonald has been with Diavik for 9 years managing, among other things, the terms and conditions of the Water License. He will give DDMI’s opening presentation and will direct responses to questions as appropriate.

   • Mr. Scott Wytrychowski is DDMI’s Site Environment Manager. Mr. Wytrychowski is responsible for day-to-day implementation of the Water License terms and conditions. He has been on-site at Diavik since construction in 2000.

   • Mr. Jeff Reinson is currently DDMI’s Manager of Infrastructure Construction and was most recently responsible for site water management and investigations into site hydrogeological conditions. Mr. Reinson has been conducting engineering assignments on-site at Diavik since 2002.

   • Mr. Brad Armstrong and Ms. Melanie Smith - legal

Additionally, DDMI intends to have the following experts in attendance and available to assist in responding to questions. We are not planning for them to give any presentations at this time.

   • Mr. Geoff Beale – water management
   • Mr. J.P. Bechtold – effluent quality criteria
   • Dr. Alan Cameron – explosives management
   • Mr. Don Chorley – hydrogeology
   • Mr. Terry Eldridge – processed kimberlite storage and closure
   • Ms. Amy Langhorne – aquatic effects monitoring
   • Dr. Karsten Liber – aquatic toxicology
   • Dr. Marcel Pineau – water treatment

4. **Time for presentation:** DDMI expects that it will take about 2 hours to give our opening presentation and request that an additional 30 minutes be made available for final closing. This estimate of time may change after reviewing the written interventions.

5. **Organization of the hearing:** DDMI expects that the most efficient approach will be for each party to present their whole intervention. However, if the preference is to proceed by topic, DDMI would have no objection provided that the first topic for consideration is the renewal application and the terms and conditions of the Water License followed by the topics that relate to the ongoing reviews and approvals (Ammonia Management Plan, Aquatic Effects Monitoring Program, etc.).

6. **Other Matters for Clarification:** none at this time

I will be in attendance at the September 29, 2006 pre-hearing conference along with Mr. Brad Armstrong and Ms. Melanie Smith.
Regards,

[Signature]

Gord Macdonald
September 21, 2006

Peter Lennie-Misgeld and Zabey Nevitt
c/o Mackenzie Valley Land and Water Board
Box 2130
7th Floor-4910 50th Avenue
Yellowknife, NT X1A 2P6

Dear Peter and Zabey:

**RE: Diavik Pre-Hearing Conference**

As requested by letter dated September 12, 2006, I wish to confirm my attendance to represent the Department of Fisheries and Oceans (DFO) for the pre-hearing conference and for the public hearing. Unfortunately at this time, I cannot provide names of specialists within the Department that may be able to accompany me.

DFO’s list of issues to be presented in our Intervention will include:

**A Brief Review of Regulatory Requirements and Monitoring Instruments**

Comparison between Fisheries Act Authorization and Water Licence:
- Listing different studies under each to identify areas of overlap and integration

Special Effects Studies-DFO Review and Status

Deficiencies in approaches thus far and recommendations for integration.

**Major Issues**

Management Plans:
- Plans are outdated
- Criteria for acceptability-Quality of Plans and Monitoring Reports
- Processes for review, revision and approval

Administrative Issues:
- Review and Approval Process for Plans and Reports
- Outstanding Reports that have not been approved and how will deficiencies be rectified
- Ambiguous and subjective terms in the Water Licence
- Compliance requirements and mechanisms
- Role of the DTC and Technical Committees

Aquatic Effects Monitoring Program:
- Outcome of Environmental Assessment and Purpose of the AEMP
Deficiencies in the past – i.e. deficiencies in baseline data and reference sites, reporting issues and technical review issues along with approval processes.

• Data collection and quality assurance objectives.

• Recommended monitoring requirements in a redesign including review, revision and adaptive management.

Duration of the Licence

These issues will be described in DFO’s written intervention, but could also be presented by topic during the hearing. I anticipate that 1 to 2 hours will be required to present the intervention.

Should you have any questions concerning the above, please contact me by telephone at (867) 669-4926 or by email at balintd@dfo-mpo.gc.ca.

Regards,

Dave Balint, Habitat Management Biologist
Fish Habitat Management
Department of Fisheries and Oceans- Western Arctic Area

cc. A/Habitat Chief, DFO
Re: Diavik Pre-hearing Conference Sept. 29th – MV2005L2-0009/N7L2-1645

Further to your letter of September 12th, this will advise that Stephen Harbicht of Environment Canada will be participating in the Diavik Pre-hearing Conference.

The Board will be presented with considerable evidence from all the interested parties on a range of topics at the November 7-9th public hearings. It is EC’s opinion that the most effective way to organize the hearing would be by topic.

EC’s list of issues to present will include the following:

- **Introduction**, which includes EC’s mandate and an overview of the issues we will discuss. This could be done on the front end of the first topic.
- **AEMP redesign**, including provision in the licence for periodic review and revision, verification of baseline data and compilation of usable data for the redesigned program, selection of a reference site
- Integration of other monitoring program results, for example the snow survey data in the AEMP reporting
- **Ammonia amendment issues** including completion and approval of the ammonia management plan, regulated limits and toxicity testing
- **Water licence limits** for regulated parameters
- Adaptive management thresholds
- Review of the **SNP** parameters and frequencies
- **Air quality** (as it pertains to contaminants potentially reaching water) including incineration waste management
- **Reclamation and Closure** plan update
- **Administrative issues** with the licence, such as approval of reports/management plans and addressing technical concerns with submissions, functioning of the Diavik Technical Committee

The suggested list of topics would include those items above which are shown in bold type.
EC’s presentation will be made by Anne Wilson, Water Pollution Specialist, and Dave Fox, Air Pollution Management Analyst, with Steve Harbicht, Head, Environmental Assessment - North also in attendance. We anticipate needing two hours for all topics, which includes some time for questions.

With respect to the need to address legal issues, there is the question of how the ammonia amendment will fit in under a renewed water licence. Given that the Record of Agreement was negotiated as an amendment to the expiring water licence, would it be retired upon replacement of that licence, and requirements incorporated into the new licence?

Please do not hesitate to contact me with any questions or comments with regards to the foregoing at (867) 669-4735 or by email at anne.wilson@ec.gc.ca.

Yours truly,

Anne Wilson  
Water Pollution Specialist  
Environmental Assessment Section,  
Environmental Protection Operations Directorate

cc:   Steve Harbicht (Head, Environmental Assessment - North, EPOD)  
      Dave Fox (Air Analyst, MSC)
September 22, 2006

Zabey Nevitt
Executive Director
Wek'èezhìi Land and Water Board
PO Box 32
WEKWEÊTÎ NT X0E 1W0

Dear Mr. Nevitt:

Re: Diavik Pre-Hearing Conference

Indian and Northern Affairs Canada (INAC) acknowledges receipt of your letter of September 12, 2006 concerning the revised date for the Diavik Diamond Mines Inc. (DDMI) water license renewal pre-hearing conference.

The following technical issues will be addressed by INAC at the public hearing:

- Aquatic Effects Monitoring Program;
- ammonia management;
- water license limits and regulated parameters;
- Closure and Reclamation Plan and security requirements; and,
- term of the water license

INAC will be represented at the public hearing by David Livingstone (Director, Renewable Resources and Environment), Dr. Kathleen Racher (Manager, Water Resources Division), Nathen Richea (Water Resources Division) and Charlotte Henry (Environment and Conservation). INAC’s experts will include Barry Zajdlik (B. Zajdlik & Associates), and John Brodie (Brodie Consultants Inc.). Mr. Zajdlik is an expert in aquatic toxicology, statistical design, analysis and interpretation and will be presenting on the Aquatic Effects Monitoring Program. Mr. Brodie is a professional engineer and mine reclamation specialist and will be presenting on DDMI’s Closure and Reclamation
Plan and provide a reassessment of the security required under the water license. INAC’s legal counsel will consist of Ms. Carla Conkin and Mr. Scott Duke of Justice Canada.

INAC's preferred option for the format of the public hearings involves general opening statements, followed by detailed discussions on a topic by topic basis. A minimum of two hours total will be required by INAC to present, depending on the format of the hearing. If needed, specific lengths of the presentations by topic can be provided at a later date, preferably closer to the Intervention deadline.

If you have any questions regarding INAC's pre-hearing conference issues, please contact Kathleen Racher, Manager, Water Resources Division, at 669-2749.

Sincerely,

[Signature]

David Livingstone
Director, Renewable Resources and Environment

cc.: Dr. Kathleen Racher (Manager, Water Resources Division)
September 21, 2006.                                                  By Email

Zabey Nevitt, Executive Director,
Wek’eejhi Land and Water Board,
c/o Mackenzie Valley Land and Water Board,
7th floor, 4910 50th Avenue,
PO Box 2130,
Yellowknife, NT  X1A 2P6

Dear Mr. Nevitt

Re Questions for Prehearing Conference re Diavik Water Licence Renewal
Hearing

I am counsel for the Tlicho Government respecting DDMI’s application to renew its
Water License N7L2-1645.  I am writing in response to the Board’s September 12 letter
soliciting information from intervenors, in preparation for the Pre-hearing
teleconference on September 29.

Procedural or legal issues to be addressed

The issues to be raised by the Tlicho Government are those of which notice was given
in earlier submissions.  Those include:

• whether DDMI’s licence should be renewed at this time, in light of (1) problems
  respecting its Aquatic Effects Monitoring Program, (2) problems respecting its
  actions pursuant to the provisions of the Licence respecting Ammonia
  Management and (3) problems respecting its abandonment and reclamation
  plan;

• steps that should be required of DDMI before its licence should be renewed;

• recommendations for Board mechanisms to support effective and enforceable
  terms and conditions requiring ongoing supervision and approvals by the Board
  - for environmental management measures, plans and programs – that may be
  required in any renewed licence; and

• the term of any renewal licence that may be issued.

The following are estimates of the time required for leading this intervenor’s oral
evidence and presentations on these issues:

1. introductory comments (15 min)
2. aquatic effects monitoring program (2 hr)
3. ammonia management (1.5 hr)
4. closure planning (0.5 hr)
5. compliance and enforcement issues (1 hr)
6. concluding remarks and recommendations for renewal (1 hr)

List of Witnesses

The Tlicho Government expects to present the following witnesses to present evidence on the above matters.
   a. Grand Chief George Mackenzie
   b. Tony Pearse
   c. Don Macdonald
   d. Peri Mehling

Format for interventions

This intervenor suggests that it should lead all the evidence from each of its witnesses, one after the other, at the appropriate part of the hearing. We consider that the hearing will move along faster if each party leads all the evidence of each of its witnesses on all the technical issues, since technical witnesses may give some evidence on more than one technical topic.

Yours truly,

Arthur Pape.
c.c. Tlicho Government.
c.c. Tony Pearse
Yellowknives Dene First Nation
Box 2514, Yellowknife, N.T. X1A 2P8

Dettaah: Ph.: (867) 873-3077
Dettaah: Fax: (867) 873-0506
Ndilo Ph.: (867) 873-931
Ndilo Fax: (867) 873-0545

Mackenzie Valley Land and Water Board (MVLWB)
Box 2130
7th Floor - 4910 50th Avenue
Yellowknife, NT. X1A 2P6
Fax 867-873-0506

September 22, 2006

Attention Mr. Zabey Nevitt, Executive Director c/o of the MVLWB.

RE: Pre-Hearing Conference Diavik Diamond Mine File MV2005L2-0009/N7L2-1645

The L&EC is providing the following in response to a directive of the Wek’eezhil Land and Water Board dated September 12, 2006. The Yellowknives Dene First Nation (YKDFN) Chiefs and Council considered the outcome of work regulators, Diavik Diamond Mines Inc. (Diavik), and other affected parties and decided intervention is necessary with the assistance of legal counsel. Our legal counsel is aware and will provide the matters of concern for the pre-hearing conference. The principal issues are grouped into five main categories; they are: 1) Efficacy of the environmental assessment and regulatory process given existing dysfunction between the MVLWB’s regulatory role and the Department of Indian and Northern Affairs enforcement role. 2) Diavik’s overall approach to addressing compliance challenges and the company’s purported “best reasonable efforts”. 3) Ammonia, and the discrepancy in government’s position with respect to addressing the issue from the evidence of the original environmental assessment, through to regulatory and licencing renewal. 4) Diavik’s proposed ammonia management plan and the apparent conflict between Diavik’s objectives and directives of the Water Licence; and, 5) Diavik’s record of aquatic environmental management and monitoring as evidenced through existing studies sponsored by the Environmental Monitoring and Advisory Board.

Chiefs and Council are aware of the water licence renewal issues and expect its membership to share in those concerns. Therefore, the YKDFN anticipate a range of participants including: Chiefs, councilors, and expert land users knowledgeable of the area in question, representatives of the Akaitcho YKDFN Treaty Negotiations office, L&EC members, and likely several YKDFN members that may want to make public statements regarding their public and Aboriginal concerns.

The YKDFN anticipate needing a day if not more to communicate the extent and depth of our concerns and to question Diavik experts and managers on the range of issues.
Organization of the hearing should include consideration of transportation logistics, availability of Diavik and government regulatory, scientific, enforcement, and management for questioning; and, attention to the special needs of older people, and women with children, and the quality of communication in Aboriginal languages.

Sincerely,

YKDFN Land & Environment

Original Signed By

Rachel Anne Crapeau
Manager
Pearl Liske

From: Peter Lennie-Misgeld [peter@mvlwb.com]
Sent: Tuesday, September 26, 2006 8:53 AM
To: Zabey Nevitt; donihee@telusplanet.net; Anne Wilson; Bart Blais; Charlotte Henry; Chris Heron; 'Dave Balint'; 'Dora Enzoe'; Doug Crossley; Eric Denholm; 'Gord MacDonald'; Jason McNeill; John McCullum; Kathleen Racher; 'Kelly Cott'; Ken Dahl; Loretta.Ransom@gov.nt.ca; Lorne Napier - Rae Edzo Metis Local; Monica Krieger; MVLWB Permit Email (MVLWB Permit); Nathan Richea; Patty Ewashchuk; Rachel Crapeau; 'Sheryl Grieve'; Stanley Anablak; Tli Cho Lands Protection Department; 'Tony Pearse'; Valerie Meeres; 'Stephen Ellis'; 'Don MacDonald'; 'Geoff Clarke'; 'Georgina Biscaye - Deninu K'ue First Nation'; 'Louie Azzolini-YKDFN'; 'Orissa Forest'; 'patric simon'; 'Rosy Bjornson - DKFN IMA coordinator'

Subject: DDMI pre hearing conference

Peter Lennie-Misgeld
Senior Regulatory Officer
Mackenzie Valley Land and Water Board
Phone (867) 766-7469
Fax (867) 873-6610
September 26, 2006

Mackenzie Valley Land and Water Board
Box 2130
7th Floor, 4910 - 50 Avenue
YELLOWKNIFE, NT
X1A 2P6

ATTENTION: PETER LENNIE-MISGELD

Dear Sirs:

RE: Diavik Pre-Hearing Conference

Further to our draft correspondence of September 22, 2006, the writer will be representing the Yellowknives Dene First Nation at the upcoming Hearings. Please include me in the Pre-Hearing Conference scheduled for September 29, 2006 commencing at 9:00 a.m. I will be located at Edmonton telephone (780) 424-9558.

Yours truly,

GREG C. EMPSON

GCE/els
Facsimile Coversheet

File: MV2005L2-0009

To: Diavik Dist List
From: Peter Lennie-Misgeld

Fax: Pages: 1

Phone: Date:

Re: Diavik Pre-hearing conference
CC:

☐ Urgent ☐ For Review ☐ Please Comment ☐ Please Reply
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● Comments:

Pre-hearing conference comments attached.

Box 32, Wekweėtį, NT X0E 1W0
Tel: 867-713-2500 • Fax: 867-713-2502 • www.wlwb.ca
Date: September 25, 2006

Application MV2005L2-0009 (N7L2-1645)

**FIRST NATIONS/ABORIGINAL ORGANIZATIONS**

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<tr>
<th>Name</th>
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<tr>
<td>Monica Kreiger</td>
<td>Lutsel’ke Dene First Nation</td>
<td>867-370-3143</td>
</tr>
<tr>
<td>Rachael Crapeau</td>
<td>Yellowknives Dene First Nation</td>
<td>873-5969</td>
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<tr>
<td>Chief Robert Sayine</td>
<td>Deninu K’ue First Nation</td>
<td>867-394-5122</td>
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<td>President Lloyd Cardinal</td>
<td>Fort Resolution Metis Council</td>
<td>867-394-3322</td>
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<td>Sheryl Greve</td>
<td>North Slave Metis Alliance</td>
<td>669-7442</td>
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<td>President North Douglas</td>
<td>Behchoko Metis Local #64</td>
<td>867-371-5406</td>
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<td>President Robert Tordiff</td>
<td>Northwest Territory Metis Nation</td>
<td>867-872-2772</td>
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<tr>
<td>Chairperson Robert Sayine</td>
<td>Akaitcho Territory Government</td>
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<td>Dora Enzoe</td>
<td>Akaitcho Pre-screening Board</td>
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<td>Georgina Biscaye</td>
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<td>Stephen Ellis</td>
<td>NWT Treaty 8 Tribal Corporation – Akaitcho IMA Implementation Office</td>
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**GOVERNMENT - TLICHO**

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<td>Chief Henry Gon</td>
<td>Gameti Community Government</td>
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<td>Chief Charlie Football</td>
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<td>Chief Charlie J. Nitsiza</td>
<td>Whati Community Government</td>
<td>867-573-3018</td>
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<tr>
<td>Director</td>
<td>Tli Cho Lands Protection Department</td>
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<td>Don MacDonald</td>
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<td>Tony Pearse</td>
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<td>INAC- Water Resources Division</td>
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<td>Dave Balint</td>
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<td>Gord Macdonald</td>
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If there is an error in our contact, please notify our office.
Facsimile Coversheet

File: MV2005L2-0009

To: Diavik Dist List
From: Peter Lennie-Misgeld

Pages: 1

Date:

Phone: DiaVik Pre-hearing conference

Ref:

CC:

Comments:

Pre-hearing conference comments attached.

Box 32, Wekweet, NT X0E 1W0
Tel: 867-713-3500 - Fax: 867-713-3502 - www.wlwb.ca
Group Send Report

Date & Time: 25-Sep-2006 10:51
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Line 2 : Machine ID : MVLWB

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Pages sent
FROM: AZZOLINI

FAX: 8678732629
TEL: 8677658550

COMMENT: CONFIDENTIAL