please post this email below on the wlwb website, you can name it "Transfer of Diavik and BHP"
....thanks, pete

-----Original Message-----
From: Zabey Nevitt [mailto:zabey@wlwb.ca]
Sent: Tuesday, December 05, 2006 3:04 PM
To: Peter Lennie-Misgeld; Sarah Baines; Patty Ewaschuk
Cc: MVLWB ((MVLWB Permit))
Subject: Fwd: Transfer of Diavik and BHP

For the BHPB and DDMI registries.

Begin forwarded message:

From: "Bob Wooley" <bwooley@mvlwb.com>
Date: December 5, 2006 2:29:01 PM MST
To: "'Zabey Nevitt'" <zabey@wlwb.ca>
Subject: FW: Transfer of Diavik and BHP

From: Joe Acorn [mailto:jacorn@ykdene.com]
Sent: Tuesday, December 05, 2006 10:59 AM
To: bwooley@mvlwb.com
Subject: Transfer of Diavik and BHP

Hi Bob,

I didn't express this as clearly as I should have in our phone call but perhaps you can talk about this with John.

In the Jan. 16th letter from the WLWB to the Tlicho Government, the WLWB says that it is "seeking comment on whether certain developments located within Wek'eézhii may have impacts outside the management area."

Essentially what is happening here is that the Tlicho are being asked if these mines are impacting Akaitcho lands. Seems to me that a better opinion on this question would have, and should have, been obtained from the Akaitcho. I doubt very much if the Tlicho would accept the Akaitcho assessing what is or isn't impacting on their lands.

In response to this letter, the Tlicho Government supplied an analysis which said that the mines are not impacting Akaitcho lands and the MVLWB relied upon this external assessment, and only this external assessment, in reaching its conclusions. Once again, I think the MVLWB would have obtained a better opinion on what is or isn't impacting Akaitcho lands by asking the Akaitcho.
As I said on the phone, the fact that the Board sought and used external evidence leads me to the following conclusions as to what was required for these to have been fair and open decisions:

- The views of all potentially impacted parties, including the Akaitcho, should have been sought, not only the views of the Tlicho Government
- The seeking and use of external evidence makes these decisions (no transboundary impact, transfer to the WLWB) more than simply internal administrative decisions;
- A publicly available Reasons for Decision should be a requirement.

Thanks for any direction you can provide as to how you would prefer to receive these transfer requests from us,

Joe Acorn  
Director of Land Management  
Yellowknives Dene First Nation  
Tel: (867) 766-3496  
Fax: (867) 766-3497  
E-mail: jacorn@ykdene.com
Sharon Debler

From: Peter Lennie-Misgeld [peter@mvlwb.com]
Sent: Monday, February 27, 2006 11:48 AM
To: Zabey Nevitt; colleen_roche@gov.nt.ca; Anne Wilson; Bart Blais; 'Dave Balint '; 'Dora Enzoe'; Eric Denholm; Eric Yaxley; 'Gord MacDonald'; Jason McNeill; 'John McCullum'; Kathleen Racher; 'Kelly Cott'; Lorne Napier - Rae Edzo Metis Local ; Monica Krieger; MVLWB Permit Email (MVLWB Permit); Nathen Richea ; 'Rachel Crapeau'; 'Sheryl Grieve'; 'Stanley Anabik'; 'Tim Byers'; Tli Cho Lands Protection Department; 'Tony Pearse'; Valerie Meeres; 'Stephen Ellis'; 'Don MacDonald'; 'Geoff Clarke'; 'Georgina Biscaye - Deninu K'ue First Nation'; 'Nam Lee'

Subject: WLWB letters

letters attached, faxed copy will also follow

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

2/27/2006
February 22, 2006

Mr. Mark Anderson, President
Diavik Diamond Mines Inc.
P.O. Box 2498, 5007-50 Avenue
YELLOWKNIFE NT X1A 2P8

Dear Mr. Anderson:

Diavik Water License Renewal Pre-hearing Conference

The Wek’eezhii Land and Water Board (WLWB) acknowledges receipt of your letter dated February 16, 2006. As you are aware, on February 4th, 2006 the WLWB took over full responsibilities relating to Land Use Permits and Water Licenses for activities within Wek’eezhii. This also includes Water License N7L2-1645 for Diavik’s (DDMI) mining and milling activities at Lac de Gras.

The WLWB is working towards familiarizing itself on the issues that have been raised during the Water License renewal process to date. The WLWB is also familiarizing itself on the issue of holding a pre-hearing conference and will advise DDMI in due course once the WLWB has had time to fully consider this matter. The WLWB also wishes to clarify that DDMI’s application is not ‘on-hold’ and the WLWB is working towards defining the process for the water license renewal.

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

Sincerely,

Violet Cameron-Blondin
Interim Executive Director

Copied to: Diavik Dist List (fax)
February 22, 2006

Mr. Mark Anderson, President
Diavik Diamond Mines Inc.
P.O. Box 2498, 5007-50 Avenue
YELLOWKNIFE NT X1A 2P8

Dear Mr. Anderson:

Submission of Ammonia Management Plan

The Wek'eezhii Land and Water Board (WLWB) acknowledges receipt of your submission dated February 16, 2006. In Diavik's (DDMI) submission to the Board, three options were proposed in relation to submission of the ammonia management plan.

Diavik has not received direction from the WLWB regarding the Discussion Paper. It is important that DDMI receive this direction prior to preparing an Ammonia Management Plan so that when the Plan is submitted it will meet the requirements as directed by the Board. The WLWB has not yet deliberated on the Discussion Paper and plans to do so during the next WLWB meeting scheduled for March 14-15, 2006.

In the interim, the WLWB hereby extends the deadline for submission of the Ammonia Management Plan to May 28, 2006. This will allow the WLWB to conduct it's deliberations on the Discussion Paper on March 14-15, 2006. The WLWB will contact DDMI with the results of their deliberations regarding the review of the Discussion Paper.

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

Sincerely,

Violet Carmell-Blondin
Interim Chair

Copied to: Diavik Dist List (fax)
February 22, 2006

Mr. Gord Macdonald
Diavik Diamond Mines Inc.
P.O. Box 2498, 5007-50 Avenue
YELLOWKNIFE NT X1A 2P8

Dear Mr. Macdonald:

**Diavik Technical Committee**

The Wek’eezhii Land and Water Board (WLWB) acknowledges receipt of your letter dated February 16, 2006. Before the WLWB took over its full responsibilities on February 4th, 2006, the Diavik Technical Committee (DTC) provided expert advice to the MVLWB on technical submissions as required under Diavik’s Water License.

The WLWB supports the work of the DTC and will continue to rely on the DTC to provide recommendations to the Board for their consideration relating to technical submissions as required under Diavik’s Water License.

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

Sincerely,

[Violet Camsell-Blondin]
Interim Chair

Copied to: Diavik Dist List (fax)
Sharon Debler

From: Peter Lennie-Misgeld [peter@mvlwb.com]
Sent: Monday, February 27, 2006 10:52 AM
To: Zabey Nevitt; colleen_roche@gov.nt.ca; Anne Wilson; Bart Blais; 'Dave Balint '; 'Dora Enzoe'; Eric Denholm; Eric Yaxley; 'Gord MacDonald'; Jason McNeill; 'John McCullum'; Kathleen Racher; 'Kelly Cott'; Lorne Napier - Rae Edzo Metis Local; Monica Krieger; MVLWB Permit Email (MVLWB Permit); Nathen Richea; 'Rachel Crapeau'; 'Sheryl Grieve'; 'Stanley Anablak'; 'Tim Byerses'; Tli Cho Lands Protection Department; 'Tony Pearse'; Valerie Meeres; 'Stephen Ellis'; 'Don MacDonald'; 'Geoff Clarke'; 'Georgina Biscaye - Deninu K'ue First Nation'; 'Nam Lee'

Subject: Tlicho Govt letter to WLWB Feb 24 2006

letter attached.....
Fax Cover Sheet

TO: Violet Camfell-Blondin, Chair Wek'eezhii Land & Water Board 610 muldas
FAX: 867 861-6610 DATE: Feb 24 2006

# OF PAGES INCLUDING COVER PAGES: 7

FROM: Tlingo Huskey per Eddie Erasmus, Lands Director

REGARDING/MESSAGE:

Attached Distribution List

File #: MV2005L2-0009 & N7L2-1645

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If transmission is incomplete, please phone (867) 392-6381, 6382, 6383, 6384.
**Application: MV2005L2-0009 (N7L2-1645)**

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February 24, 2006.

Violet Camsell-Blondin, Chairperson,

Wek’èzhì Land and Water Board
c/o Mackenzie Valley Land and Water Board
Box 2130
Yellowknife, NT X1A 2P6
Phone: (867) 669-0506
Fax: (867) 669-6610

Dear Ms. Camsell-Blondin

I understand that the Mackenzie Valley Land and Water Board has now decided that the Wek’èzhì Board has the jurisdiction for Diavik’s application to renew its Water Licence.

I am therefore writing to explain the Tlicho Government’s views about the procedures that the Wek’èzhì Board should use to deal with that application. I am writing now because we disagree with the procedural suggestions made by Diavik - in Gord Macdonald’s recent letters to you, dated February 15 and February 16.

Diavik’s February 16 letter asked you to direct Diavik to deal with its Aquatic Effects Monitoring Program (AEMP) through the Diavik Technical Committee. Diavik’s February 15 letter asked you to direct it to proceed to prepare its Ammonia Management Plan by following one of three procedural options it proposes.

For the reasons explained below, we believe that both Diavik’s proposals underestimate the seriousness of its environmental management problems, and propose ways to resolve them that would be inappropriate and ineffective. Also, Diavik’s proposals for addressing the ammonia issues and the AEMP deficiencies are contrary to the views of the technical experts for all the other parties.

In preparation for the public hearing to be held on Diavik’s licence renewal application, the Mackenzie Valley Land and Water Board (“MVLWB”) scheduled a 3-day technical session in mid-December, 2005 - to identify and discuss technical issues relating to the
licence renewal process. At that session there was a consensus of the technical people for all the parties, except Diavik, that: (1) much work is still required to properly complete the discussion paper on ammonia management options; and, (2) the AEMP needs a complete re-design from the ground up by qualified experts, and that cannot be achieved through the Diavik Technical Committee ("DTC").

The Tłı̨chǫ Government submitted comments to the MVLWB prior to the technical sessions. Our position was that Diavik is not in compliance respecting three major obligations under its current licence: aquatic effects monitoring, ammonia management, and the closure plan. We said that these non-compliance issues need to be dealt with in the public hearing as threshold issues, before licence renewal should be considered. We took the position that if Diavik could not demonstrate compliance with its licence at the hearing, then the Board would have two choices: (1) reject the application to renew the licence, or (2) adjourn the hearing and allow Diavik time to do the work to get into compliance - so that the Board could later give Diavik another chance to prove compliance, with the hope that they will do so, so that other licence renewal issues can then be considered and decided.

This continues to be the position of the Tłı̨chǫ Government on this application. We explained this on the record earlier, to put Diavik on notice of our position, and I am now doing so again.

The technical session discussed the aquatic effects monitoring, ammonia management, and the closure plan issues. This resulted in a consensus of the parties (except Diavik) that the Tłı̨chǫ assessment of these issues is correct - that these terms of the licence are fundamental to sound environmental management of the mine, that Diavik is not in compliance with these terms, and that these problems should be resolved as part of the licence renewal process. The company, then and now, apparently refuses to understand that these issues are critical and need to be properly resolved before a new licence can be issued.

DIAND's evaluation of the AEMP, presented at the December technical sessions, concluded that there is no effective AEMP in place. This is extremely serious, given the priority in the original license hearing on the uniqueness of Lac de Gras and the need to have an effective early-warning system in place that would effectively detect subtle changes in aquatic conditions. Instead, Diavik has given us only smoke and mirrors—a monitoring program that at best can detect only 'catastrophic change' (in the words of DIAND's expert reviewer).
Diavik’s request to have the Diavik Technical Committee (“DTC”) work on ‘fixing’ the AEMP is a bad suggestion. The MVLWB explicitly removed the DTC from the relicensing process, because the Committee does not have either the independence or the expertise to be useful to this process. There is no reason for the Wek’eezhii Board to now reverse that. The flawed AEMP cannot be redesigned by or with the assistance of the DTC. This is a task that Diavik must take responsibility for. After it accepts responsibility and does the work required, the Wek’eezhii Board will need to decide whether it has done its work properly. The Board will need to use the public hearing process – including expert evidence – in order to make that decision.

A similar situation applies to the ammonia issues. The current licence was amended by the MVLWB, to add a detailed work plan respecting ammonia management, when Diavik asked for an amendment to its licence to allow greatly increased ammonia emission levels. That work plan was the result of a consensus decision by all the parties, including Diavik, that was reached through a mediated process managed by the MVLWB. The amendment allowed temporarily increased emission levels, on condition that Diavik undertake a number of research and planning steps, and the plan included independent review of a number of them, in order to develop the best possible ammonia management plan. The whole work plan was developed so that the ammonia management issue could be thoroughly researched and then reviewed by the Board in the context of the anticipated application for licence renewal.

At the December technical session, it was clear that technical experts for all the parties, except Diavik, believe that the company has not complied with its obligations under the ammonia work plan. The Licence established a Working Group to supervise some of Diavik’s ammonia-related tasks. In its review of Diavik’s Discussion Paper on Ammonia Management Options, that Working Group found that the paper was largely deficient and should not be accepted as the basis for preparing the required Ammonia Management Plan. The MVLWB then asked the Working Group to clarify the detailed work needed to get the Discussion paper into shape. The Working Group identified those extra tasks in a document filed with the Wek’eezhii Board on Feb 14, 2006. In our view, this document identifies the work that needs to be done in order to properly inform the development of the Ammonia Management Plan. Importantly, Diavik is also seriously in arrears in terms of conducting the necessary studies to evaluate the toxicity of ammonia in their effluent – key information needed for developing an effective ammonia management plan.

And now Diavik has written to you to ask you to choose their next steps, from three options they suggest:
1. revising the Discussion Paper to account for only a small part of the recommended Workplan;

2. not revising the Discussion Paper but going directly to the preparation of the Ammonia Management Plan; or,

3. not revising the Discussion Paper, but going directly to the preparation of the Ammonia Management Plan to be submitted at the public hearing on Diavik’s application.

The problem is that all of those options amount to a change in the work plan in the amended licence. In asking you to choose the company’s next steps from his list of three options, Mr. Macdonald is really asking you to amend the licence. Of course the Chair of the Board could not do this. And we believe the Board should not even consider doing so in the circumstances.

All of Diavik’s suggested options are dangerous because they would result in the Ammonia Management Plan being produced with incomplete scientific and technical information. The protection of Lac de Gras would therefore be placed at greater risk, and this should not be permitted to happen.

In proposing such options, instead of doing the work required to produce an adequate discussion paper, Diavik reveals its continuing lack of environmental responsibility. It refuses to take seriously the nature of the potential problems its diamond mine poses, and it is not spending the money and effort needed to address these issues.

As the Tłı̨chǫ Government’s earlier submission explained, the ammonia and AEMP issues are two of the three areas in which we say that the company is not in compliance with its licence. The MVLWB recently reviewed the water licence with a view to identifying which portions of the licence it is responsible to enforce. That review found that the three issues we have identified are the Board’s responsibility.

I trust that your staff have informed you that during the December technical session the technical people for most parties also expressed great concern about the Mackenzie Valley Board’s past inability to take effective action to require Diavik to comply with its environmental management responsibilities under its licence. The Tłı̨chǫ government expects to make submissions at the hearing to assist the Board in that respect.

As I explained above, the Tłı̨chǫ Government prefers that Diavik become a responsible environmental manager under the terms of its licence, so that a renewal of the licence can
be considered. But if they do not, we will ask the Board to exercise its jurisdiction in accordance with the principles in the Tłı̨chǫ Agreement.

We are concerned that time is moving on, and that the window of time for Diavik to get its environmental management work in order before the current licence expires is diminishing. This places urgency on moving forward quickly and effectively.

Accordingly, we ask that the Wek'eezhii Board set a date for a pre-hearing conference in the very near future. We would be grateful if we could be briefly consulted about possible dates for that hearing, so that we can arrange for Tłı̨chǫ Government to be properly represented.

In Tłı̨chǫ unity

[Signature]

Eddie Erasmus, Lands Director
Lands Protection Department

c.c. Diavik Diamond Mines Inc., Attention Gord Macdonald

c.c. circulation list
Sharon Debler

From: Peter Lennie-Misgeld [peter@mvwb.com]
Sent: Thursday, February 23, 2006 2:17 PM
To: 'Sharon Debler'
Subject: FW: Diavik Procedural issues

please file under n712-1645/mv2005l2-0009
-----Original Message-----
From: Zabey Nevitt [mailto:zabey@wlwb.ca]
Sent: Thursday, February 23, 2006 1:44 PM
To: Peter Lennie-Misgeld
Subject: Fwd: Diavik Procedural issues

Begin forward message:

From: Art Pape <apape@pstlaw.ca>
Date: February 23, 2006 12:29:49 PM MST
To: Zabey Nevitt <zabey@wlwb.ca>
Cc: Eddie Erasmus <eddieerasmus@tlichocom>, "Richard B. Salter" <rbsalter@pstlaw.ca>, "John B. Zoe" <jzoe@tlichocom>, Bertha Rabesca Zoe <brabescazoe@pstlaw.ca>
Subject: Diavik Procedural issues

Dear Zabey: I have seen the letters of February 15 and 16 sent by Gord Macdonald to the Interim Chair, Violet Camsell-Blondin. These concern how two important issues will be handled procedurally between now and the hearing on Diavik's application to renew its licence. In my view, the procedural suggestions in Diavik's letters would have an adverse impact on the effectiveness of the Wekeejhii Board's pending hearing. The Tlicho Government is therefore preparing a submission to the Wekeejhii Board on those procedural questions. That submission will of course be copied to Diavik and other parties. I think it will be possible to complete that work by end of day tomorrow. I would be grateful if you would let the Interim Chair know that this submission will be coming, in the hope that no decision will be made on Diavik's procedural suggestions until the Board can hear from the Tlicho Government and consider those views. Thank you.

Arthur Pape.

Arthur Pape
Pape Salter Teillet
barristers & solicitors

Vancouver office:
#460 - 220 Cambie Street, Vancouver, BC V6B 2M9
Phone: 604-681-3002 Fax: 604-681-3050

Toronto office:
546 Euclid Avenue, Toronto, ON M6G 2T2

2/23/2006
Phone: 416-916-2989 Fax: 416-916-3726

E-mail: apape@pqlaw.ca

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Zabey Nevitt
Interim Executive Director
Wek'eegzhii Land and Water Board
Phone: 867 669 9592
Fax: 867 669 9593

2/23/2006
February 13, 2006

Mr. Mark Anderson, President
Diavik Diamond Mines Inc. (DDMI)
P.O. Box 2498, 5007-50 Avenue
YELLOWKNIFE, NT X1A 2P8

Dear Mr. Anderson:

Wek’èezhii Land and Water Board Assumes Licensing and Permitting Responsibilities February 4th, 2006

As you may be aware, the Mackenzie Valley Resource Management Act (MVRMA) was amended on August 4th, 2005 by the Tł’čhǫ Land Claims and Self-Government Act (the amending legislation). One of the important changes associated with the coming in to force of the Tł’čhǫ Agreement and MVRMA amendments was the establishment of the Wek’èezhii Land and Water Board (WLWB).

The WLWB will function as a regional panel of the Mackenzie Valley Land and Water Board (MVLWB) and will have exclusive authority over the permitting of land use and the licensing of water use or the disposal of waste into water for activities that are to take place and are likely to have an impact wholly within Wek’èezhii. Section 95 of the amending legislation provided for a 6 month period after August 4th for the WLWB to prepare for its operations.

The WLWB took over its full responsibilities on February 4th, 2006. On February 8th, 2006 the MVLWB determined that Diavik’s mining operations at Lac de Gras do not fall under Section 103(1) of the Mackenzie Valley Resource Management Act and Water License N7L2-1645 now falls under the jurisdiction of the WLWB. We anticipate a smooth transition and no significant changes in the way your Water License is administered.

.../2
As the WLWB is not yet fully staffed, and to ensure a smooth and efficient transition, staff of the Mackenzie Valley Land and Water Board will continue to administer permits and licenses and process new applications.

During this interim period all inquiries, applications and other communications relating to your permit or license should be directed to the staff of the MVLWB. All correspondence relating to your permit or license should continue to be forwarded to the offices of the MVLWB.

If you have any questions or require further clarification, please do not hesitate to contact our Executive Director, Zabey Nevitt at (867) 669-9592 or the staff of the MVLWB at (867) 669-0506.

Yours sincerely,

[Signature]

Violet Camsell-Blondin
Interim Chair, WLWB

Cc. Eddie Erasmus, Director, Lands Protection Department Tłı̨chǫ Government
    Diavik Distribution List - via fax
    Todd Burlingame, Chair MVLWB
### Date: February 15, 2006

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

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<tr>
<td>Chief Leon Lafferty</td>
<td>Behchoko (Rae-Edzo) Community Government</td>
<td>867-392-6139</td>
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<td>Chief Henry Gon</td>
<td>Garnet Community Government</td>
<td>867-997-3411</td>
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<td>Chief Charlie Football</td>
<td>Wekweeti Community Government</td>
<td>867-713-2030</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>Tl'cho Lands Protection Department</td>
<td>392-6389</td>
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<tr>
<td>Don MacDonald</td>
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<td>(250) 729-9628</td>
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<tr>
<td>Tony Pearse</td>
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<td>(250) 539-3025</td>
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<tr>
<td>Chairperson Robert Sayine</td>
<td>Akaitcho Territory Government</td>
<td>51 867-394-3413</td>
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<td>Jason McNeil, Coleen Roche</td>
<td>GNWT - ENR</td>
<td>63 873-4021</td>
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<tr>
<td>Nam Lee</td>
<td>INAC- South Mackenzie District Office</td>
<td>57 669-2720</td>
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<tr>
<td>Kathleen Racher</td>
<td>INAC- Water Resources Division</td>
<td>58 669-2716</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>
<td>66 873-8185</td>
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<td>Dave Balint</td>
<td>DFO</td>
<td>68 669-4940</td>
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<td>Stanley Anablak</td>
<td>Kitikmeot Inuit Association</td>
<td>982-3311</td>
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<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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<td>Dora Enzoe</td>
<td>Akaitcho Pre-screening Board</td>
<td>52 867-370-3209</td>
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<tr>
<td>Georgina Biscaye</td>
<td>Akaitcho Pre-screening Board</td>
<td>867-394-5122</td>
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</tbody>
</table>

If there is an error in our contact, please notify our office.
Date: February 15, 2006

To: Mr. Mark Anderson, President

Organization: Diavik Diamond Mines Inc.

Fax Number: (867) 669-9058

Eddie Erasmus, Director, Lands and Protection Department,
T'ııchø Government

Diavik Distribution List – via Fax

Copied To: Todd Burlingame, Chair, MVLWB

From: Janna for Violet Camsell-Blondin, Interim Chair, WLWB

Number of pages including cover 3

Remarks:

Wek'eezhii Land and Water Board Assumes Licensing and Permitting Responsibilities February 4, 2006

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N7L2-1645/
FILE NUMBER: MV2005L2-0009

Date: February 15, 2006
To: Mr. Mark Anderson, President
Organization: Dliyik Diamond Mines Inc.
Fax Number: (867) 669-6058
Copied To: Eddie Erasmus, Director, Lands and Protection Department, Tsiigeht Government
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Wek'eexhli Land and Water Board Assumes Licensing and Permitting Responsibilities February 4, 2006

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12505393025
Mackenzie Valley Land and Water Board

Date: February 15, 2006
To: Mr. Mark Anderson, President
Organization: Diavik Diamond Mines Inc.
Fax Number: (867) 669-9058
Copied To: Eddie Erasmus, Director, Lands and Protection Department, NWT Government

Number of pages including cover: 3

Wek‘ezhíih Land and Water Board Assumes Licensing and Permitting Responsibilities February 4, 2006

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Start time : 18-Feb 02:04am
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February 16, 2006

Ms. Violet Carnsell-Blondin, Interim Chair
Wek'êezhii Land and Water Board
C/O Mackenzie Valley Land and Water Board
7th Floor – 4910 50th Avenue,
PO Box 2130
Yellowknife, NT X1A 2P6

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Re: Diavik Technical Committee

In response to confirmation that Diavik's mining operations are within the jurisdiction of the Wek'êezhii Land and Water Board (WLWB), DDMI is seeking clarification on the future role of the Diavik Technical Committee (DTC).

The DTC was established by the Mackenzie Valley Land and Water Board to provide review and recommendations on technical submissions related to Diavik's Water License. DDMI continues to support the existence and work of this committee.

DDMI is seeking clarification at this time because an important aspect of Diavik's Water License, the Aquatic Effects Monitoring Program (AEMP), is actively under consideration by the DTC. Specifically, the DTC is analyzing the specific capabilities of the AEMP to detect changes in Lac de Gras, and is expecting to meet to discuss results of this analysis in the very near future.

Thank you for your attention in this matter.

Regards,

[Signature]

Gord Macdonald
cc: Zabey Nevitt, Peter Lennie-Misgeld
Diavik Technical Committee
Sharon Debler

From: Peter Lennie-Misgeld [peter@mvlwb.com]
Sent: Wednesday, February 15, 2006 4:10 PM
To: Zabey Nevitt; colleen_roche@gov.nt.ca; Anne Wilson; Bart Blais; 'Dave Balint'; 'Dora Enzoe'; Eric Denholm; Eric Yaxley; 'Gord MacDonald'; Jason McNeill; 'John McCullum'; Kathleen Racher; 'Kelly Cott'; Lorne Napier - Rae Edzo Metis Local ; Monica Krieger; MVLWB Permit Email (MVLWB Permit); Nathen Richea; 'Rachel Crapeau'; 'Sheryl Grieve'; 'Stanley Anablak'; 'Tim Byerses'; Tli Cho Lands Protection Department; 'Tony Pearse'; Valerie Meeres; 'Stephen Ellis'; 'Don MacDonald'; 'Geoff Clarke'; 'Georgina Biscaye - Deninu K'ue First Nation'; 'Nam Lee'

Subject: Letter to DDMI on Wek'eezhii Land and Water Board licensing and permitting

letter attached....
February 13, 2006

Mr. Mark Anderson, President
Diavik Diamond Mines Inc. (DDMI)
P.O. Box 2498, 5007-50 Avenue
YELLOWKNIFE, NT X1A 2P8

Dear Mr. Anderson:

Wek’èezhii Land and Water Board Assumes Licensing and Permitting Responsibilities February 4th, 2006

As you may be aware, the Mackenzie Valley Resource Management Act (MVRMA) was amended on August 4th, 2005 by the Tłı̨chǫ Land Claims and Self-Government Act (the amending legislation). One of the important changes associated with the coming into force of the Tłı̨chǫ Agreement and MVRMA amendments was the establishment of the Wek’èezhii Land and Water Board (WLWB).

The WLWB will function as a regional panel of the Mackenzie Valley Land and Water Board (MVLWB) and will have exclusive authority over the permitting of land use and the licensing of water use or the disposal of waste into water for activities that are to take place and are likely to have an impact wholly within Wek’èezhii. Section 95 of the amending legislation provided for a 6 month period after August 4th for the WLWB to prepare for its operations.

The WLWB took over its full responsibilities on February 4th, 2006. On February 8th, 2006 the MVLWB determined that Diavik’s mining operations at Lac de Gras do not fall under Section 103(1) of the Mackenzie Valley Resource Management Act and Water License N7L2-1645 now falls under the jurisdiction of the WLWB. We anticipate a smooth transition and no significant changes in the way your Water License is administered.
As the WLWB is not yet fully staffed, and to ensure a smooth and efficient transition, staff of the Mackenzie Valley Land and Water Board will continue to administer permits and licenses and process new applications.

During this interim period all inquiries, applications and other communications relating to your permit or license should be directed to the staff of the MVLWB. All correspondence relating to your permit or license should continue to be forwarded to the offices of the MVLWB.

If you have any questions or require further clarification, please do not hesitate to contact our Executive Director, Zabey Nevitt at (867) 669-9592 or the staff of the MVLWB at (867) 669-0506.

Yours sincerely,

[Signature]

Violet Carmsell-Blondin
Interim Chair, WLWB

Cc. Eddie Erasmus, Director, Lands Protection Department Tłı̨chǫ Government
    Diavik Distribution List via fax
    Todd Burlingame, Chair MVLWB
Mackenzie Valley Land and Water Board
7th Floor - 4910 50th Avenue
P.O. Box 2130
YELLOWKNIFE NT X1A 2P6
Phone (867) 669-0506
FAX (867) 873-6610

STAFF REPORT

| Company: | Diavik Diamond Mines Inc. (DDMI), BHP Billiton |
| Location: | Application |
| Lac de Gras | N7L2-1645, MV2003L2-0013 |
| Date Prepared: | Meeting Date: |
| Feb 8, 2006 | Feb 8, 2006 |

Subject:
Transboundary decision on DDMI and BHPB mining operations in the Lac de Gras Area

Purpose/Report Summary

- To provide the Board with MVLWB staff analysis regarding diamond mining operations in the Lac de Gras area and if these mining activities are likely to have impacts outside of Wek'eezhii.
- To provide the Board with assurance that MVLWB staff are committed to supporting the WLWB with staffing and resources indefinitely until the WLWB is able fully assume operations on these files independent of the MVLWB.

Background

As of February 4, 2006 the Wek'eezhii Land and Water Board (WLWB) has commenced operations and is now a decision making body with responsibilities for Land Use Permitting and Water Licensing in Wek'eezhii. The Board’s authority comes from the Tli Cho Land Claim and Self-Government agreement and recent amendments to the Mackenzie Valley Resource Management Act. Both the DDMI and BHPB diamond mines are located within Wek'eezhii and require consideration from the MVLWB on the Transboundary nature of these projects. The MVLWB’s Transboundary policy states:

‘MVLWB staff will prepare a staff report for the Board outlining their determination of the nature of the interdependence, linkage or impacts of the proposed development and providing their recommendations. The Board is not bound by these recommendations and will make the final determination on whether the application is Transboundary’.
Both DDMI and BHPB have been inquiring on when a decision will be made by the MVLWB to determine if their projects are Transboundary or not. The mining companies have expressed concern that if their projects are determined not to be Transboundary and become the responsibility of the WLWB, some delays and difficulties related to WL administration and management might occur during the transition from the MVLWB to the WLWB. MVLWB staff has clearly stated to both operators that if the projects are determined not to be Transboundary, the transition will be seamless and efficient from the MVLWB to the WLWB.

The MVLWB’s Transboundary Policy states ‘All Section 103 (1) applications for Land Use Permits and Water Licenses in the Mackenzie Valley will be made to the Mackenzie Valley Land and Water Board (MVLWB or the Board). These include any application:

(a) that is to take place or is likely to have an impact in more than one management area, or in one management area and an area outside a management area; or
(b) that is to take place wholly outside any management area

In accordance with Section 103 of the Mackenzie Valley Resource Management Act, responsibility for determining whether an application should be made to the Board, or to a regional board, rests with the Board.

It is worthwhile to note that when the MVLWB started its operations in March of 2000, the MVLWB became responsible for both the DDMI and BHPB WL’s in the transition from the NWTWB to the MVLWB. In that transition, little support was provided to the MVLWB to allow for a smooth transition in taking over these files and this has, at times, created difficulties in effectively managing these projects under their respective WL’s. In order to avoid a similar situation with the WLWB in the transition of these two projects, MVLWB staff are committed to supporting the WLWB with staffing and resources indefinitely until the WLWB is fully able to assume operations on these files independent of the MVLWB.

MVLWB staff has reviewed the information submitted by the Tli Cho Government dated Feb 8, 2006 and concur with the conclusions reached in the technical analysis as submitted by T.D. Pearse Resource Consulting. MVLWB staff agree with the conclusion that monitoring to date has not shown that there have been any water related impacts downstream of Lac de Gras as a result of DDMI and BHPB operations.

Conclusion/Recommendation

- MVLWB staff agree with the conclusion as outlined in by the Tli Cho Government that these two projects are unlikely to have environmental impacts outside of Wek’èezhii; therefore, are not Transboundary.
- The WLWB should assume the responsibility for the management and administration of the DDMI and BHPB Water Licenses with the support of
the MVLWB staff until the WLWB is able to fully assume operations on these files independent of the MVLWB.

Peter Lennie-Misgeld
Senior Regulatory Officer
MEMORANDUM

To: Grand Chief George Mackenzie, Tlicho Government
Subject: Diamond Mines Lac de Gras Area
Date: January 29, 2006

This memo is a response to your request for technical information about whether the current diamond mining operations in the Lac de Gras area are likely to have an impact outside Wek'eezhii.

As you know, Lac de Gras lies wholly within the Wek'eezhii boundaries, and forms the headwaters of the Coppermine River. This water system includes a number of lakes downstream from Lac de Gras, including Desteffany, Point, Redrock and Rocknest Lakes, before becoming the Coppermine River, which then flows northerly to Kugluktuk. Water in this system exits Wek’eezhii over 200 km below Lac de Gras.

It is certain that the BHPB and Diavik mines have impacts wholly within the Wek’eezhii region, on water, fisheries, and on wildlife populations and their habitat. Those are of great importance to the Tlicho, and that is why the Tlicho have always been very concerned to ensure effective monitoring, management and mitigation of those impacts. The only question addressed in this memo is whether the impacts from those mines also extend beyond the Wek’eezhii boundaries—i.e., whether there are aquatic impacts to the Coppermine river system outside Wek’eezhii or effects on the Bathurst caribou herd when it migrates outside Wek’eezhii. It is this issue that I examine below.

In providing this assessment, I have reviewed these possibilities from the following perspectives:

- what the companies predicted before they started mining;
- what the regulatory bodies concluded before mining was authorized; and,
- what current environmental monitoring results have shown.

The evidence from this review, described below, indicates that it is technically certain that both of the current diamond mines have impacts wholly within Wek’eezhii, but that we do NOT know that either of those mines is also likely to have an impact outside Wek’eezhii.
IMPACTS TO THE COPPERMINE RIVER

Company Predictions

- Both diamond mining companies predicted very limited downstream water quality and biological impacts within the confines of Lac de Gras. No environmental effects were predicted downstream from Lac de Gras.

- BHPB predicted no water quality or biological effects in Lac de Gras, stating in its water licence application to the NWT Water Board that water quality downstream from the mine would reach background (i.e. pre-mining) levels by Slipper Lake, before it reaches Lac de Gras.¹

- In its application for a water licence Diavik stated that its water management plan would “ensure that Lac de Gras is not adversely impacted” and that “no adverse environmental effects in to Lac de Gras have been identified or are expected due to this discharge that would justify additional treatment.”²

Regulatory Assessments

- In 1996, the federal environmental assessment panel agreed with BHPB’s predictions and concluded that “the effects on either water quantity or quality are not expected to be detectable downstream of Slipper Lake.”³

- The 1999 federal environmental Comprehensive Study Report for the Diavik project concluded that,

  “With the mitigation measures proposed by Diavik, no significant adverse environmental effects on the biophysical and social-economic environments have been identified.”

  “The RAs conclude that the potential for the Diavik project to interact with other known projects and activities in the regional study area to produce significant cumulative adverse effects is unlikely.”

- The Minister of Environment is quoted in the federal Comprehensive Study Report as determining that “the project was not likely to result in significant adverse environmental effects to Lac de Gras and the Coppermine River.”⁴

Current Monitoring Results

- The most recent available monitoring from both projects confirms that environmental impacts have not occurred downstream of Lac de Gras.

- BHPB’s aquatic effects monitoring shows that elevated levels of six constituents are being recorded at Slipper Lake upstream of Lac de Gras. Three of these are also elevated in Lac de Gras, despite BHPB’s predictions that background levels would be attained at Slipper Lake. However, the changes are slight, and are nowhere near levels which could be considered ecologically significant at this time. To date BHPB has been an effective environmental manager of its downstream mine water discharge, and has options it can undertake if mitigation of worsening water downstream from the mine is required. Currently available technical information therefore establishes that, given the current water quality trends and options to mitigate, impacts from Ekati mine to aquatic life within Lac de Gras and, especially, downstream from Lac de Gras and outside Wek’eezhii, have not occurred and are not likely in the future.

- Diavik’s most recent reported monitoring (2004) shows elevated levels of some water constituents near its operations in Lac de Gras. While elevated, these are still below predicted levels and thresholds for federal aquatic life guidelines. These are not at levels high enough to be ecologically adverse at this time, although the capacity of Diavik’s aquatic monitoring program to properly detect water quality changes has recently been called into question. However, it is also important to note that Diavik is required to construct a water treatment plant that will remove contaminants to a regulated level if required, so that mitigation of increasing contaminant levels in Lac de Gras is possible. Given this, current technical information establishes that impacts on water quality downstream of Lac de Gras and outside Wek’eezhii have not occurred and are not likely in the future from the Diavik mine.

CARIBOU

Company Predictions

- In its environmental impact statement BHPB predicted that “with appropriate mitigative measures in place, caribou will be largely unaffected by the NWT Diamonds project.”

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In its environmental assessment submission, Diavik predicted that the level of habitat reduction might result in "very localized shifts in habitat use with no measurable effect on broad seasonal distribution." Additionally, effects to caribou mortality would be "very low", and the project, along with other land use activities within the region, was "not expected to measurably affect fitness, reproductive performance or abundance of the Bathurst herd."

Environmental Assessments

- The FEARO panel for BHPB's Ekati mine concluded that "the likelihood that the Project would have significant impacts on the overall numbers, health or migration patterns of the Bathurst caribou herd is small."

- In the federal Comprehensive Study Report on the Diavik proposal, the GNWT was reported to have concluded (with respect to the Bathurst caribou herd) that "there will not likely be significant adverse impacts as a result of the project." However, GNWT also observed that "Diavik's analysis partially acknowledged uncertainties in its assessment that the Bathurst herd is not expected to be affected by project-specific or cumulative effects on migratory movements." The GNWT also noted that Diavik's approach "limited its ability to determine whether the distribution or abundance of caribou would be limited by the project." The GNWT went on to note that while there may be some impacts on individual animals, it generally agreed with Diavik that these would be largely undetectable at the herd or population level.

- The federal Comprehensive Study Report on the Diavik proposal concluded that "the project-related and cumulative effects on the Bathurst caribou herd and habitat would not likely significantly adversely affect the herd."

Monitoring Results

- The monitoring of caribou impacts at both mines has shown that project-related effects to caribou individuals are occurring within Wek'eezhii, but that those appear to be minimal and localized.

- BHPB's monitoring program in the past has shown slight decreases in the amount of time a caribou cow with a calf spends feeding near the mine as opposed to farther away, but the trend has not been consistently demonstrated. Mortality of caribou at the mine (7 in 2004) is minimal and is almost exclusively related to predators, not interactions with mining activity. The number of animals migrating through the mine site each year fluctuates wildly, and it is impossible to detect any significant impact of the mine on abundance of animals during migration.

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7 Environmental Assessment Submission Diavik Diamonds Project. September 1998. Sec.6.4.
8 CSR p. 114-115
9 CSR p. 119.
The summer of 2004, for example, saw an increase over previous years in the number of caribou migrating through the site.

- Diavik’s caribou monitoring has also not shown any detectable impact to caribou moving through the site. While Diavik’s caribou monitoring program has been criticized for its methodology in an independent review commissioned by Environmental Monitoring Advisory Board, that review concluded that despite possible confounding effects from other factors, “there does not appear to be any mine effects at the scale the data were collected.”

- At a regional scale the picture gets somewhat more complex, and there appears to be some evidence of an emerging cumulative effect on the Bathurst herd from diamond mining activity. As you know, the herd is at very low numbers and is declining by some 9% each year. This puts the herd in a very precarious position, since it is now very susceptible to any increased adverse effects, and a great effort must now be made to ensure that additional impacts do not occur.

- Two independent scientific studies published last year took a more regional approach in reviewing satellite and aerial tracking data, and identified subtle but statistically valid differences in behaviour or access to good summer habitat near the BHPB and Diavik mines. The effect is a detectable avoidance of the mines by animals, occurring at some distance (25-30 km) from the mines. The studies show that up to 10% of the herd’s summer range could be affected by this.

- Avoidance patterns in themselves are not necessarily harmful to the animals, but if avoidance means that animals are using less productive food habitat, or spending more energy to travel greater distances, then it is conceivable that nutritional impacts could occur to individual animals. If this is the case there could as a result be possible consequences for the overall herd health, reproduction or survival. If this did occur, it could mean that local effects would affect the herd as a whole, and therefore those impacts could move with the animals when they migrate outside Wek’eezhii. The technical data and reports now available do not allow us to know if this is the case.

- Such herd-level effects would be hard to isolate, since they will be confounded by many other influences affecting the caribou (both individuals and the herd) during the course of any one year and over their lifetime. If such changes begin to show up as adverse effects to the caribou population, and that the diamond mines could be shown to be a contributing factor, then a case could be made that mine-related impacts were extending beyond the boundary of Wek’eezhii. However, from a technical perspective, we are still a long way from being able to reach such a

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conclusion, even tentatively. The odds are high that even if such effects were to occur, and we could measure them, we would not be able to assign the cause of such impacts to the diamond projects in Wek’eezhii.

The result of all this is that, on the basis of technical information currently available, it is impossible to conclude that the BHPB and Diavik diamond projects are likely to have impacts on caribou outside Wek’eezhii.
February 8, 2006

Violet Camsell-Blondin, Chair
Wek'eezhíh Land and Water Board

Dear Violet,

I’m writing in response to your letter of January 16, 2006 requesting an opinion from the Tłı̨chǫ Government as to whether diamond-mining activities are likely to have effects outside of Wek’eezhíh.

To answer this question I commissioned a technical review to examine the state of knowledge we have with respect to the current geographic scope of the impacts and what has been predicted for the future. This review is attached for your consideration.

The review concluded that

“It is technically certain that both of the current diamond mines have impacts wholly within Wek’eezhíh, but that we do NOT know that either of those mines is also likely to have an impact outside Wek’eezhíh.”

Tłı̨chǫ Government agrees with this conclusion.

Please contact me if you require any additional information about this.

In Tłı̨chǫ Unity,

Grand Chief George Mackenzie

Attach: Tony Pearse Memo to Grand Chief re Mining Impacts
January 16th, 2006

Grand Chief George Mackenzie
Tłı̨chǫ Government
Box 412
Rae-Edzo NT X0E 0Y0

Dear Grand Chief:

The Wek’èezhìí Land and Water Board is seeking the comment of the Tłı̨chǫ Government on whether certain developments located within Wek’èezhìí may have impacts outside of the management area; and therefore files relating to these developments should be disposed of by the Mackenzie Valley Land and Water Board (MVLWB) and not the Wek’èezhìí Land and Water Board.

Within Wek’èezhìí there are a number of files relating to the DIAVIK and BHP Billiton and Diamond mines that, while located wholly within Wek’èezhìí, may be considered to have impacts outside of Wek’èezhìí.

According to the Mackenzie Valley Resource Management Act, section 102 (2) (a) the Wek’èezhìí Land and Water Board will be responsible for applications to the board that;

“....is to take place, and that is likely to have an impact, wholly within the management area...”

This means that any file that is located wholly within and has no impact outside of Wek’èezhìí will be considered and administered by the Wek’èezhìí Land and Water Board.
If the full Mackenzie Valley Land and Water Board determine an application, to not be located wholly within Wek'eezhii, or have impacts outside of Wek'eezhii, a “trans-boundary panel”, selected by the Chair of the MVLWB will dispose of the application. The office of the MVLWB will administer the file.

As stated, the board is seeking the views of the Tłı̨chǫ Government on whether the BHP and Diavik mines have impacts outside of Wek’eezhii. Any views presented may be considered, along with other evidence, by the larger board (MVLWB) that will make the final decision on determining trans-boundary files.

The Mackenzie Valley Land and Water Board will be holding a full board meeting early in February 2006 at which point these, and other files, may be discussed. We would appreciate any comments you may have on whether these projects have trans-boundary impacts by that time.

Sincerely,

- ORIGINAL SIGNED BY -

Violet Camsell-Blondin
Interim Chair

Cc. Todd Burlingame, Chair MVLWB