WEK'ÈEZHÌI LAND AND WATER BOARD RULING

1.0 BACKGROUND:
The Wek'eezhii Land and Water Board (WLWB or Board) is engaged in a proceeding which addresses an application by Diavik Diamond Mines Inc. (DDMI) to renew the water licence (W2015L2-0001) for its Lac de Gras mine in the NWT. The public hearing has been completed, a draft licence has been issued for comment by parties and final argument has been received by the Board from parties, including the Environmental Monitoring and Advisory Board (EMAB) a watchdog agency which acts on communities’ behalf in relation to this mine.

Board staff advised parties that no new evidence was to be submitted along with final arguments.

On July 16, 2017 EMAB submitted its final argument. On July 17, 2015 DDMI wrote to the Board objecting to certain material included in the EMAB argument on the basis that it was new evidence. Board staff advised EMAB that it could respond to this DDMI complaint. On July 20, 2015 EMAB submitted a revised final argument with the new material identified by DDMI removed. On July 21, 2015 DDMI replied indicating that, in their view, not all of the new material had been removed by EMAB.

2.0 THE ISSUE:
DDMI alleges that the following paragraph included in the July 20, 2015 EMAB revised argument still includes new evidence:

“Sulphate toxicity in livestock can manifest itself in diarrhea, decrease in food and water consumption, and weight loss (CCME 1987). Assuming effects are similar in caribou, these chronic toxicity effects might contribute to more energetic stresses on that portion of the Bathurst Caribou herd that comes in contact with and ingests high-sulphate seepage waters from Diavik’s mine. Such physical stress would not be helpful in allowing a herd in decline to rebound to a much-needed state of population growth.”

DDMI submits that it did not have the opportunity to address this information in the proceeding or to question EMAB witnesses about it.

The inclusion of new evidence at such a late stage in the proceeding would, in DDMI’s submission, be unfair.
3.0 ANALYSIS:

EMAB did not submit argument on the new evidence/fairness question. EMAB simply removed most, but not all of the material identified in the DDMI objection of July 17, 2015.

Review of the EMAB arguments (July 16 and 20) indicates that the information complained of was provided in support of a recommendation for an effluent quality criterion (EQC) for sulphate. The EMAB intervention and hearing presentations filed earlier in the proceeding both address the need for a sulphate EQC, but neither of them includes the information in the paragraph above. DDMI argues that in their review of the record they have been unable to find this evidence at all.

In the Board’s view, the CCME information is of wide circulation and likely unsurprising to water resource management professionals. The component of this evidence which could be helpful to the WLWB in relation to caribou is speculative, based on an assumption for which no evidence has been tendered by EMAB. Thus, overall, this evidence is of limited relevance and would not likely be of material assistance to the Board at this time.

Notwithstanding these considerations, the Board has determined that this evidence is new and its inclusion in the record would be unfair. While any prejudice to DDMI resulting from the presence of this information on the record appears to the Board to be minimal, the WLWB has decided that it should not be considered in a final decision on this water licence application.

4.0 RULING:

The Board finds that the paragraph set out in section 2 above is new evidence. In the interests of fairness, the Board will not consider this information in making its decision on the DDMI water licence renewal application.

Signed the 23rd day of July, 2015,

Violet Camsell-Blondin
Chairperson, Wek’eezhii Land and Water Board