Background on CARC

- A summary of our previous involvement in diamond mine environmental assessment and regulation
- An overview of our involvement in the Snap Lake environmental assessment to date
- Issues and concerns with the Snap Lake environmental assessment and project

Background on CARC

The Canadian Arctic Resources Committee (CARC) was set up in 1972 as a non-profit organization to represent the interests of those concerned about the North. CARC has always promoted long-term sustainability, making sure that the policies and decisions of today do not take away the ability of future generations to enjoy a healthy environment and to make economic choices. Our advocacy work is supported by research and communications to promote public debate and better decisions.

CARC worked with Aboriginal peoples in the Mackenzie Valley on the proposed pipeline and has continued to watchdog resource development and government policy. CARC is not a typical environmental organization, as conservation of lands and resources is not seen as an end in itself but a part of a coordinated approach to sustainability. CARC does not oppose resource development but it must be thoroughly and fairly assessed for its impacts on the environment and people.

CARC has always had an office in Ottawa and for over seven years now, another office in Yellowknife. There are currently four full-time staff, divided evenly between our two offices. CARC's funding comes from individual donors and from charitable foundations, mostly tied to specific projects. CARC has worked in the following areas over the last year;

- Building communications capacity in the North for non-governmental organizations,
- Implementation of the international treaty on the elimination of persistent organic pollutants and negotiations on mercury,
- Launch of a Cumulative Effects Program, *Plan for the Land*, including work on a cumulative effects public education poster,

- Development and distribution of a set of principles to guide oil and gas development in the

North as endorsed by a variety of northern-based environmental organizations, and

- Research and advocacy work on the issue of mine site reclamation and abandoned mines.

Previous Involvement in Diamond Mining

CARC coordinated the participation of the Northern Environmental Coalition (Canadian Arctic Resources Committee, Canadian Nature Federation, Ecology North, and the World Wildlife Fund Canada) in the BHP Ekati mine environmental assessment panel process. Given that this was Canada's first diamond mine and its potential for cumulative effects, environmental organizations saw this review as an essential forum to raise a number of issues including:

- Targeting a portion of revenues from the mine for economic diversification;
- Proper monitoring and enforcement, the need for land use planning and independent oversight;
- Negotiation of completed impact and benefit agreements before construction of the project;
- A significant contribution from the proponent to Traditional Knowledge research by communities;
- Consideration of alternatives including phased development;
- The lack of a systematic approach to the identification and protection of special areas across the North; and
- The need for participant funding.

It is interesting to note that eight years later, with Canada's third diamond mine, most of these issues are still on the table.

The Northern Environmental Coalition was the only intervener at the BHP public hearings that brought forward independent technical experts from all fields. We also made these volunteer experts available to Aboriginal organizations in advance of the hearings. The total in-kind contribution to the panel process was roughly calculated at $250 K for which only $29 K was provided in participant funding.

CARC's involvement in the BHP Ekati mine continued into the water licencing. Although the public was excluded from any involvement in the negotiation of the environmental agreement for the project, CARC's Research Director was invited to serve as a member of the Akaitcho Treaty 8 team. CARC's Research Director also served as the Akaitcho Treaty 8 appointee to the

Board of Directors for the Independent Environmental Monitoring Agency for two years.

CARC was also involved in the environmental assessment and regulatory processes for the Diavik diamond mine. Unfortunately, there was no legal requirement for participant funding for that process either. An environmental coalition, including CARC, requested $250 K to participate on the same basis as during the BHP panel. DIAND rejected the request offering $50 K but with a restriction that none of it could be used for technical experts. CARC was still able to bring forward independent technical experts and made them available to Aboriginal organizations once again.

CARC raised issues around the alternatives to the Diavik project (specifically underground vs. open-pit mining), cumulative effects, socio-economic effects and significance. Our concerns were not so much with the company's plans but with the government's inability or unwillingness to ask the right questions or require the right kind of information for a well-informed decision.

CARC was so concerned with the Minister of the Environment's decision to approve the faulty Diavik Comprehensive Study Report and the referral of unresolved issues to other processes, that we sought judicial review in the federal court. An out-of-court settlement was reached directly with Diavik that will see $400 K provided for independent work on indicators, thresholds, limits of acceptable change and modeling for the Slave Geological Province. Our 'Plan for the Land' Program was launched last year. More on this appears below.

Involvement in the Snap Lake Environmental Assessment to Date

CARC has not been funded in any way to participate in the environmental assessment of the Snap Lake project. No participant funding was provided by the Mackenzie Valley Environmental Impact Review Board, the Department of Indian Affairs and Northern Development, or others. CARC did not solicit funding for participation in this environmental assessment from our donor base or from charitable foundations. This would be a difficult undertaking given general market conditions and that the Snap Lake project is the third diamond mine; although, many of same issues remain.

CARC's involvement in the Snap Lake environmental assessment can be summarized as follows:

- commented on the draft work plan,
- requested rulings on intervener funding and scoping sessions,
- participated in the pre-technical meeting conference,
- participated in the socio-economic technical sessions, and
- participated in the pre-hearing conference.

The Board has accepted CARC as an intervener in this environmental assessment. We have had a very limited capability to engage in the environmental assessment and have not conducted any technical reviews beyond our general set of skills and knowledge around other diamond mining projects and government policy and management practices. This opening statement is largely based on the experience we bring to this environmental assessment and our observations to date.

We do not take a position on the project at this point. We outline some issues that are still in our opinion unresolved at this point, and make some recommendations on terms and conditions, especially should the Board be of the view that it is appropriate to proceed with the project, with or without measures to prevent any significant adverse impacts. We will provide further observations and recommendations in our closing statement.

Issues and Concerns with the Snap Lake Environmental Assessment and Project

The De Beers Snap Lake Diamonds Project is a ‘greenfield’ development, a proposed new mine in a previously undisturbed area. There is the potential for five operating mines (Ekati, Lupin, Diavik, Snap Lake and possibly Jericho) in the Slave Geological Province and within the migratory range of the Bathurst caribou herd. The proposed development is in a watershed (the Aylmer Lake/Lockhart River system) previously undisturbed by industrial activities.

The project is to be located in an area of unextinguished Aboriginal title. There are no land use plans for this area nor are there any legal provisions for such processes in this region. There are no protected areas in the Slave Geological Province other than the East Arm land withdrawal. As there are no legal requirements, it is not clear if there will be an environmental agreement for this project, socio-economic agreements, or impact and benefit agreements.

Participant Funding

While the focus of this public hearing is on the Snap Lake project, its potential impacts and

public concerns, this is also an opportunity for parties to comment on the process and how it might have been improved. The Board denied CARC's request for participant funding for the Snap Lake environmental assessment in September 2001. This affected our ability to participate in the process and other parties have raised similar issues (see below).

CARC strongly supports the concept of co-management but it has been our experience during the diamond mining environmental and regulatory processes that the capability and commitment of government to participate in and promote the public interest in these processes has declined. Additionally, not all areas of concern may be covered by government expertise. There is a growing need for independent technical expertise as part of environmental assessment, a fact recognized by the Board in its move to retain its own technical experts for this environmental assessment. We commend the Board for this initiative.

Participant or intervener funding is an important tool in ensuring public participation in environmental assessment and is essential for a rigorous, comprehensive, and fair process. In recognition of the value of participant funding, the federal government has enshrined the right to participant funding in the *Canadian Environmental Assessment Act* for mediations and panel reviews (s. 58 (1.1)). In Bill C-9, now before the House of Commons, this right to participant funding will be extended to comprehensive studies (very similar to an environmental assessment under the *Mackenzie Valley Resource Management Act* (*MVRMA*)) and joint panels. However, there are no provisions for participant funding in the *MVRMA* leaving NWT residents at a distinct disadvantage compared to most other citizens across the country.

Participant funding is not just for environmental organizations but has been used to support communities, business and professional organizations, women's groups, Aboriginal organizations and others. The National Round Table on the Environment and the Economy recommended in its June 2001 report on Aboriginal Communities and Non-Renewable Resource Development recommended that "the Government of Canada should allocate … $500,000 per year for intervener funding" to ensure that the MVEIRB "can effectively carry out its mandate." The report also recommended that the *MVRMA* be amended to include a requirement for participant funding. The MVEIRB has already raised the issue of participant funding in the context of the capacity of communities and northerners to be meaningfully engaged in the environmental assessment of a potential Mackenzie Valley pipeline.

CARC has raised the issue of participant funding on many occasions and in the context of several northern resource development projects, including Snap Lake. The response we have received from the DIAND Minister in December 2001 is that it is up to each Board to request supplemental funds for the purpose of participant funding. The Minister responded in a similar manner during this environmental assessment by suggesting to the Board that supplemental funding for the participation of the Lutsel K'e First Nation might be made available.

Our hope is that the Board can demonstrate some leadership on the issue of participant funding and thus ensure better public participation in future environmental assessments.

Relevant Public Registry Documents:

- 76 (CARC request for a ruling on participant funding)
- 120 (MVEIRB declines to render a ruling on participant funding)
- 216 (Dene Nation e-mail citing lack of resources to do conformity assessment)
- 548 (Lutsel K'e First Nation to DIAND Minister on limited capacity and lack of resources to participate in Snap Lake environmental assessment)
- 650 (DIAND Minister letter to Lutsel K'e indicating MVERIB can request additional funds for Lutsel K'e First Nation participation in Snap Lake environmental assessment)
- March 14, 2003 Letter from NSMA Legal Counsel to MVEIRB (NSMA has no further resources to participate in Snap Lake environmental assessment)
- e-mail sent to MVEIRB on April 24, 2003 (e-mail correspondence between CARC and MVEIRB Executive Director, indicating that the MVEIRB did not request any additional funding for public participation for fiscal year 2003-2004)
- letters faxed to MVEIRB on April 25, 2003 (correspondence between CARC and DIAND Minister on issue of participant funding for northern environmental assessment)

Recommendation

1. The Mackenzie Valley Environmental Impact Review request supplemental funding for an arms-length participant funding program from the Department of Indian Affairs and Northern Development. The participant funding program could be modelled after the current program of the Canadian Environmental Assessment Agency, with additional public consultation in the Mackenzie Valley. In the event that the Board does not wish to pursue supplemental funding, the Board should ask the Minister of Indian Affairs and Northern Development to appoint a

senior representative to report on options for participant funding within six months of the release of the report for this environmental assessment. Opportunities for cost-recovery, including participant funding, from proponents should be examined.

Cumulative Effects and Integrated Resource Management

Cumulative effects still appear to be an outstanding issue amongst government, De Beers and the independent experts retained by the Board on biophysical and socio-economic issues based on the issues presented at the pre-hearing conference and subsequent submissions.

A cumulative effects assessment and management framework for the NWT and an action plan for the Slave Geological Province were terms and conditions for the approval of the Diavik Comprehensive Study Report by the federal Minister of the Environment in November 1999. This framework and action plan was supposed to be implemented by April 1, 2001. We are concerned about the failure of government to meet this deadline and how this makes proper assessment and management of projects like Snap Lake much more difficult. We further note that the Cumulative Impact Monitoring Program pursuant to Part 6 of the *MVRMA* is five years behind schedule.

In the absence of these two initiatives it is difficult to understand how the issue of cumulative effects associated with the Snap Lake project can be properly assessed, mitigated or managed. CARC is also aware of the need for legally binding land use planning for Crown lands on the NWT side of the boundary, in an area that covers Snap Lake. This will likely require the equitable and timely settlement of Akaitcho Treaty 8 land rights and the Dogrib Treaty 11 comprehensive claim and self-government agreement.

Relevant Public Registry Documents:

- 658 (INAC Addendum to their technical report, outline cumulative effects concerns with water)
- April 22, 2003 (Ellis Consulting Services, Outstanding Issues from the Technical Sessions)
- April 24, 2003 (GNWT Technical Presentation Summary)

Recommendation:

2. The Mackenzie Valley Environmental Impact Review Board strongly urge the federal government to re-commit to the timely and effective implementation of both the Cumulative Impact Monitoring Program and Cumulative Effects Assessment and Management Framework through dedicated multi-year funding.

CARC's Plan for the Land Program

CARC's cumulative effects study, *A Plan for the Land*, is a four-year study to assess ecological, economic and social impacts of industrial development. Enormous changes are underway in the Central Arctic, and people are looking for a way to balance the need for employment while maintaining ties to the land. Under current development scenarios the population of the SGP is predicted to grow by almost 40% in the next decade, virtually all in Yellowknife as people migrate from smaller Aboriginal communities in search of employment. The implications of this level of development are enormous. CARC's position is that before any further expansion of industrial development, there must be policy articulated for the objectives of Northern development. There must be an agreed framework for assessing cumulative effects and limits of acceptable change. CARC's concern is that little is being done about the long-term cumulative effects that 20 years of predicted development will have on the land, water, wildlife and the people of the region. To answer the question of how much development is enough and how much is too much, we need to work with communities to look at the big picture by:

- Identifying key indicators of ecological well-being and limits of acceptable change.
- Identifying key indicators of socio-economic well-being and limits of acceptable change.
- Designing and promoting implementation strategies for the application of the indicators and limits of acceptable change in elements of integrated resource management, including land use planning, environmental assessment, resource regulation, and monitoring.
- Developing public information/communication programs, including maps of development scenarios, media, and public dissemination of information, to enhance public participation in decision-making processes and to empower decision-makers in managing cumulative effects and sustainability more generally.
- Developing and undertaking community and institutional capacity-building with identification of indicators and limits of acceptable change in resource management decision-making

The ultimate goal of CARC's Plan for the Land program is to conduct research that will provide impacted communities with adequate information and tools to allow them to make informed decisions about how much development is too much, especially for key species such as caribou. In order to achieve comprehensive regional cumulative effects assessment, it will be

necessary to devise a technique for modeling biophysical and socio-economic data together. Some work has been done in this area in other parts of Canada and it is our intention to create a working group of senior experts in modeling in each field to devise a new modeling technique to aid stakeholders in assessing these impacts and benefits.

Some of the specific projects we are currently working on:

Gather, review and assess existing ecological and socio-economic data for the Slave Geologic Province. The assessment component corresponds to the recognized need for digital data suitable for modeling purposes, as well as the need to identify critical gaps.

Cumulative effects mapping of the proposed Bathurst Inlet Port and Road Project

- thematic map of the area, extending from the Arctic coast as far south as Contwoyto Lake showing the proposed road and port, the location of the Lupin and Izok mine sites, available caribou and grizzly bear telemetry data, local communities and the Nunavut boundary;
- map showing existing activities in the area extending from the Arctic coast as far south as Lac de Gras. This map includes the Lupin, Ekati, and Diavik mine sites; advanced exploration sites (e.g. Izok, Jericho, Condor, Hackett River, Yava, Goose, George Lake, Musk etc.); winter road portages, lodges and outfitter camps, and communities.
- GLOBIO Cumulative Impact Analysis using the current situation and three different scenarios as follows:

Estimated impact of existing activities in 2002;

Planned Scenario – the road and port are developed; and Izok becomes an operating mine;

Induced Development Low Scenario – the road and port are developed; Izok becomes an operating mine; an all-weather connection is established to the Diavik and Ekati mines; and 50% of advanced exploration sites become active mines with all-weather connections to the road network;

Induced Development High Scenario - the road and port are developed; Izok becomes an operating mine; an all-weather connection is established to the Diavik and Ekati mines; 100% of advanced exploration sites become active mines with all-weather connections to the road network

March 2003 workshop - Working with biophysical and socio-economic data: A preliminary step toward an integrated approach to cumulative effects assessment in the Slave Geological Province. By bringing together researchers concerned with social, cultural and economic and biophysical work as relates to cumulative effects assessment and monitoring in the SGP/NWT/Nunavut, the workshop was organized to:

1. open dialogue between the social science and natural science practitioners so that networks for greater communication can be developed;
2. present examples from northern Alberta where significant research is underway to integrate socio-economic and biophysical components into resource management; and
3. identify the preliminary steps for the development of integrated modeling tools for use by resource managers and decision-makers in the SGP/NWT.

At the end of the Program, we expect to have a computer-based modeling system that will assist northerners in identifying limits of acceptable change and a means to implement measures to prevent undesirable outcomes. We had hoped that this type of work would have been done by now under the Cumulative Effects Assessment and Management Framework or Cumulative Impact Monitoring Program. It would have assisted the Board in its examination of the cumulative effects of the Snap Lake project combined with other activities in the Slave Geological Province.

Fair Return to the Crown and Fair Distribution of the Revenues

Mining royalties and taxation, or the economic rent, may be comparatively low for the NWT relative to other jurisdictions in Canada and perhaps the world. When DIAND revised the royalty regime under the Canada Mining Regulations in 1999, there was no change in revenues beyond the fact that the BHP Ekati mine went into production. The GNWT last year dropped the corporate tax rate by 2% in the hopes of securing further tax windfalls.

Will the government and public get a fair return for the extraction of diamonds at Snap Lake?

There are equity issues around the distribution of the direct economic rent from NWT diamond mining, particularly the revenues to the federal vs. territorial government. Some of this may be the subject of the on-going Inter-Governmental Forum negotiations. The GNWT has the ability to raise additional revenue from diamond mining through a mining tax or capital investment tax. As an extra incentive, any new revenues raised during the course of the current formula financing arrangement would not result in any “claw-backs” in federal transfer payments.

Similar to the recommendation made by this Board in its 1999 report on the Ranger et al. pipeline where it was suggested that the federal government review royalties from frontier gas developments in the NWT, we would suggest a similar approach for the consideration of the adequacy of our system in the NWT. We note too that DIAND is now undertaking such a review for oil and gas royalties.

Recommendation:

3. The Mackenzie Valley Environmental Impact Review Board recommends a public review of the mineral royalty and taxation regime for its equity and fairness.

Although CARC may differ on the preferred governance and structure, the commitment by De Beers to a De Beers Canada Fund is admirable in terms of supporting a more diversified and sustainable economy in the affected communities. There has not been a similar commitment from either the federal or territorial governments to directly target some of the revenues from the Snap Lake project to promote sustainability.

We have issue was raised during the BHP panel review, during the Diavik comprehensive study and now again, for the Snap Lake environmental assessment. There are examples of such funds or targeted use of revenues from other jurisdictions including Alaska, Alberta, Norway and the Shetland Islands. The point here is how to make an inherently unsustainable practice and project contribute to sustainable development. There may be additional measures possible to ensure that northerners can capture more of the benefits from the Snap Lake project such as investment in training or phased development matched to the capability of northerners to take advantage of opportunities to capture more of the benefits. We are concerned that there is very limited capacity to truly gain benefits from the Snap Lake project given the capacity in most northern communities.

Relevant Public Registry Documents:

- 514 (CARC e-mail to GNWT on targeted use of revenues from Snap Lake)
- 516 (CARC e-mail to DIAND on targeted use of revenues from Snap Lake)
- 634 (De Beers Technical Memo on De Beers Canada Fund)
- letter faxed to MVEIRB on April 25, 2003 (February 12, 2003 letter from DIAND to CARC stating that there will not be any changes to current use of revenues from mining)

Recommendation:

4. The Mackenzie Valley Environmental Impact Review Board recommend that a portion of government revenues from non-renewable resource development, including the Snap Lake project, be set aside for economic diversification and to promote more sustainable development.

Socio-economic and Environmental Agreements and Impact and Benefit Agreements

CARC is of the view that proper mitigation and monitoring of the socio-economic and environmental effects of the Snap Lake project requires legally binding agreements. DIAND has indicated in its response to an IR from the MVEIRB that an environmental agreement will be required for the Snap Lake Project. The GNWT stated in its response to the same IR that an environmental agreement was highly desirable. Similarly, De Beers has committed to a socio-economic agreement with the GNWT as a tool for benefits retention and for the marketing of Snap Lake production locally.

For these commitments to have any effect and to ensure that they are followed, the Board must first find that there is the potential for significant adverse environmental impact pursuant to s. 128 (1)(b) and the approval of the proposal be made subject to the imposition of such measures as it considers necessary to prevent the significant adverse impact (s. 128 (1)(b)(ii)). The measures recommended by the Board can then become binding on First Nations, local governments, regulatory authority or department or agency for the federal and territorial government only when the measures recommended have been accepted by the responsible Ministers (s. 130(5)). With these requirements in mind, CARC is of the view that the Board should make determinations that environmental, socio-economic, and impact and benefit agreements are necessary as mitigation measures. The Board may wish to offer some advice on the content of some of these arrangements.

The last outstanding issue with regard to agreements is their timing. We note that the DIAND Minister required the negotiation of an environmental agreement and “significant progress” on impact and benefit agreements before the issuance of the water licence for the BHP Ekati

mine. Similarly, the Diavik Comprehensive Study Report stated that all the project approvals had to be in place before construction was to begin. CARC is of the view that the Board should make a similar finding for the Snap Lake project.

Relevant Public Registry Documents:

- 276 (GNWT response to MVEIRB IR 1.1.69)
- 277 (INAC response to MVEIRB IR 1.1.69 and 1.1.71)
- 395 (De Beers conformity response)
- 516 (CARC e-mail to DIAND on targeted use of revenues from Snap Lake)
- letter faxed to MVEIRB on April 25, 2003 (February 12, 2003 letter from DIAND to CARC stating that there will not be any changes to current use of revenues from mining)

Recommendation:

5. The Mackenzie Valley Environmental Impact Review Board find pursuant to s. 128(1)(b)(ii) of the MVRMA that the Snap Lake project is likely to have a significant adverse impact on the environment subject to mitigation measures, one such measure should be the completion of environmental, socio-economic and impact and benefit agreements, before construction starts.

We thank the Board for the opportunity to appear before you today and to make this opening statement. We respectfully reserve the right to question other parties and to make a closing statement. We look forward to the remainder of these public hearings.