



December 6, 2006

Chief Robert Sayine
Deninu Kue First Nation
P.O. Box 1899
Fort Resolution, NT
X0E 0M0

Dear Chief Sayine:

RE: Environmental Assessment of the Proposed Gahcho Ku'e Mine

Thank you for your letter of November 29th, 2006 addressing the issue of consultation for the De Beers Canada Gahcho Ku'e mine. The Mackenzie Valley Environmental Impact Review Board (Review Board or MVEIRB) also received your April correspondence on this matter.

Firstly, I want to assure you that permitting of the DeBeers Gahcho Kue diamond mine has not proceeded. The mine application is still before the Review Board for environmental assessment or environmental impact review. This must be completed before any license or permit or other authorization can be issued for construction to proceed.

The Review Board is aware that DeBeers is in possession of pre-existing permits to carry out further exploration at the proposed mine site and that exploration activities may have occurred. However the mining development itself has not been permitted at this time.

Following is a brief overview of the environmental assessment process and consultation that has occurred to date.

A public technical issues scoping workshop and hearing were held into the proposed DeBeers Gahcho Kue project in March and April 2006 in Yellowknife. The MVEIRB also conducted a community issues scoping workshop in Fort Resolution and a community issues scoping hearing in Yellowknife in April 2006. Members of the Deninu Kue First Nation attended each of these events. A Deninu Kue First Nation delegation made a presentation to the Review Board at the April 2006 scoping hearing in Yellowknife.

On June 13, 2006 the Review Board ordered that an environmental impact review of the proposed development be conducted. The MVEIRB found that the proposed development was likely to be cause for significant public concern. The Review Board's June 28, 2006 Report of Environmental Assessment provided the reasons for this

decision which were based in large part on what it heard at the technical and community issues scoping hearings as well as the concerns expressed during the scoping workshops in Fort Resolution and other communities.

On July 28, 2006 DeBeers Canada applied to the NWT Supreme Court for a judicial review of the order to conduct an environmental impact review. The NWT Supreme Court held a hearing on this matter November 21, 2006 and is expected to render a decision in early 2007.

Once the Supreme Court's decision is known the process will recommence. A draft work plan will be prepared for consultation with all parties to the proceeding. It will include a number of steps in which the Deninu Kue First Nation can make its views known to the Board as well as ask questions of and discuss issues with other parties. Examples may include technical sessions (i.e. workshops), information requests, technical report submissions, and hearings.

While the Review Board is responsible for ensuring that its environmental impact assessment processes are conducted fairly and in certain circumstances for conducting statutory consultation under the *Mackenzie Valley Resource Management Act* (MVRMA), the Board is not responsible for Crown consultation under section 35 of the *Constitution Act, 1982*. As an administrative tribunal bound by the rules of fairness, the Review Board cannot act in a fiduciary capacity toward the Deninu Kue First Nation.

The Review Board is aware that, pursuant to recent decisions of the Supreme Court of Canada (particularly the *Taku Tlingit* case), its proceedings can contribute to the Crown's consultation efforts. However, it is the Board's view that the ultimate responsibility for such consultation rests with the governments of Canada and the Northwest Territories. We suggest that you pursue these concerns with these governments.

In the Review Board's view, its process addresses the consultation responsibilities given to it by the MVRMA, and particularly section 3 which outlines how a duty to consult under the MVRMA is to be carried out.

If it would be helpful, MVEIRB staff are available to meet with you and discuss procedural aspects of the environmental impact assessment process. If you wish to discuss your concerns further in this regard, please contact the environmental assessment officer for the proposed DeBeers Gahcho Kue mine development, Martin Haefele toll free at 1-866-912-3472 or by fax (867) 766-7074, or by e-mail mhaefele@mveirb.nt.ca.

Senior staff are also available to assist in a meeting of relevant organizations to discuss an appropriate overall consultation process. Staff would attend to explain and answer any questions regarding the Review Board's process pursuant to the MVRMA. If you are successful in securing similar commitments from relevant agencies please let us know so that suitable meeting arrangements can be made.

Sincerely,



Vern Christensen
Executive Director

