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April 7, 2015

EC file: 5100 000 012/015
MVEIRB: EA1314-01

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Mackenzie Valley Environmental Impact Review Board (MVEIRB)
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Via Online Submission

RE: EA1314-01 - DDEC - Ekati Diamond Mine - Jay Project – Information Request Responses

Environment Canada (EC) has reviewed the Information Requests (IRs) submitted to the MVEIRB regarding the above-mentioned Environmental Assessment and is responding to IRs directed at the Department as requested by the MVEIRB. EC's specialist advice is provided pursuant to the *Canadian Environmental Protection Act, 1999*, the pollution prevention provisions of the *Fisheries Act*, the *Migratory Birds Convention Act, 1994*, and the *Species at Risk Act*.

Should you require further information, please do not hesitate to contact Sarah-Lacey McMillan at (867) 669-4724 or sarah-lacey.mcmillan@ec.gc.ca.

Sincerely,

Harold Leadlay
A/ Manager Environmental Assessment and Marine Programs, PNR

Attachment: EC Information Request Responses

cc: Dave Fox, A/Head Environmental Assessment North (NT & NU), EPOD
EC Review Team

**MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD
DOMINION DIAMOND EKATI CORPORATION'S JAY PROJECT
FILE NO: EA1314-01**

**Responses to Information Requests (IRs)
February 2015
From Environment Canada**

1. EA Approach

Mackenzie Valley Environmental Impact Review Board (MVEIRB) IR#77

Reference:

EA Approach-ToR s. 4.1 Significance determination factors; DAR s.6.2.2, Table 6.2-1 Assessment endpoints and measurement indicators; 6.7 Residual Impact Classification and Determination of Significance; 8.7.1.2 Determination of Significance (water quality); 9.1.3 Fish and Fish Habitat-VC

Preamble:

The developer has provided its framework for significance, in terms of assessment endpoints for the Key Lines of Inquiry (eg. p12-129 for caribou; p.8-4 and 8-448 for water quality; p.9-6 and table 9.1-2 for fish; 14-6 for community benefits and impacts). These are summarized in column 3 of Table 6.2-1 (. p6-8). This helps the Review Board to understand what is meant when the DAR describes the developer's views on the potential significance of project impacts.

Request:

To all Parties: For each of the Key Lines of Inquiry (except Alternatives), please state your views on Dominion's choice of assessment endpoints for characterizing significant impacts.

Response:

Environment Canada's (EC's) mandate covers the preservation and enhancement of the quality of the natural environment, including water, air, soil, flora and fauna, as well as species at risk and migratory birds. EC delivers on the Department's mandate by informing environmental decision-making and regulations and by supporting the delivery of services to Canadians. Within the Mackenzie Valley, EC provides specialist or expert information and/or knowledge to the MVEIRB and to licensing authorities, in accordance with the expertise that the Department has available as required under the Mackenzie Valley Resources Management Act (MVRMA).

In the NWT, the MVEIRB is responsible for with administering environmental assessments under the MVRMA. EC is participating in the review of the proposed Jay

Pipe Project in order to provide specialist expertise, information and knowledge to the MVEIRB under the MVRMA and to regulators.

EC has reviewed the Key Lines of Inquiry for water quality. EC is satisfied with what the Proponent has proposed as assessment endpoints for water quality in conjunction with their measurement indicators.

1. EA Approach

Independent Environmental Monitoring Agency (IEMA) IR #52

Reference:

Significance Determinations; DAR Reference: s. 6 Determination of Significance, pg. 6-9

Preamble:

Several of the valued components (Key Line of Inquiry/Subject of Note) analyzed indicate they would be significant if the assessment end point is exceeded. "Results from the residual impact classification are then used to determine the environmental significance from the Project (and other developments) on assessment endpoints." (pg. 6-30). For wildlife and vegetation valued components, the following is described as the assessment endpoint: "Self-sustaining and ecologically effective populations (and communities)". Ecological well-being is an important indicator of the significance of environmental effects for these valued components. However, societal values should play an important role in determining significance of environmental effects. For example, whether an environmental effect violates a law, whether it contradicts a management plan, program or policy for the valued component, or whether it conflicts with Aboriginal plans for use of the valued component for traditional purposes. These do not appear to have been considered in determining the significance of environmental effects for wildlife and vegetation valued components. For the record, the Agency believes that violations of laws or regulations caused by the project (alone or cumulatively) would be a strong indicator that the effect is significant. The Agency believes that contradicting an approved management plan, policy or program, or conflicting with Aboriginal plans for use of the valued component for traditional purposes would also be an indicator that the effect is significant.

Request:

For each of the valued components for which the endpoint is "self-sustaining and ecologically effective population", we request that DDEC please provide the following:

1. What laws or regulations provide some protection for this valued component?
E.g., the Species at Risk Act for listed species, the Wildlife Act of the NWT.
2. What protection is provided in the laws or regulations for this valued component?
E.g., Section 32 (1) of the Species at Risk Act: "No person shall kill, harm, harass,

capture or take an individual of a wildlife species that is listed as ... an endangered species or a threatened species.”

3. What management plans or equivalent exist that apply to this valued component? These would be available from such sources as Environment Canada, Environment and Natural resources or the WRRB.

4. In view of the results of parts 1, 2 and 3 above, how might one revise the determination of significance for the effects on these valued components? The Agency requests that GNWT-ENR and Environment Canada responds to questions 1-4 above.

Response:

1. Environment Canada (EC) is responsible for implementing the *Migratory Birds Convention Act* (MBCA), which provides for the protection and conservation of migratory bird populations and individuals through the *Migratory Bird Regulations* (MBR). Migratory birds are defined by Article I of the MBCA, which contains more than 450 bird species, including most species grouped under the Upland Breeding bird and Waterbird valued components (VC). Some species, such as raptors, owls, blackbirds and ptarmigan, are not covered by the MBCA. Federal protection does not extend to species not covered by the MBCA unless they are listed under the *Species at Risk Act* (SARA).

EC also administers SARA in cooperation with Fisheries and Oceans Canada and the Parks Canada Agency. The objective of SARA is to prevent wildlife species from becoming extirpated or extinct, to provide for the recovery of wildlife species that are extirpated, endangered or threatened as a result of human activity, and to manage species of special concern to prevent them from becoming threatened or endangered. Peregrine Falcon (Raptor VC), Short-eared Owl (Raptor VC) and Rusty Blackbird (Upland Breeding bird VC) are listed on Schedule 1 of SARA as Special Concern. Red-necked Phalarope (Upland Breeding bird VC), Grizzly bear and Wolverine have been assessed by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) but are not currently listed on Schedule 1 of SARA.

For more information on which migratory birds are protected under the MBCA: <http://www.ec.gc.ca/nature/default.asp?lang=En&n=421B7A9D-1>

2. Prohibitions under the MBCA and the MBR apply throughout Canada and can be summarized as follows:

- Section 5 of the MBCA prohibits persons to be in possession of a migratory bird or nest except as authorized by the regulations.

- Section 5.1 of the MBCA prohibits persons from depositing substances harmful to migratory birds in waters or areas frequented by migratory birds or in a place from which the substance may enter such waters or such an area.

-Section 5 of the MBR prohibits persons from “hunting” migratory birds except as authorized by the regulations. As defined in the regulations, “hunting” includes any attempt to chase, harass, capture, or kill a migratory bird.

-Paragraph 6(a) of the MBR states that no one shall disturb or destroy the nests or eggs of migratory birds.

Under SARA, the General Prohibitions (Sections. 32 and 33) and the Critical Habitat Prohibitions (Sections 58, 60 and 61) do not apply to any of the VCs under assessment as the SARA species are listed as ‘Special Concern’.

However, Subsection 79 (2) of SARA, states that during an assessment of a project, the adverse effects of the project on listed wildlife species and their critical habitat must be identified, that measures are taken to avoid or lessen those effects, and that the effects need to be monitored. This subsection applies to all species listed on Schedule 1 of SARA. This would apply to Peregrine Falcon (Raptor VC), Short-eared Owl (Raptor VC) and Rusty Blackbird (Upland Breeding bird VC). As a matter of best practice, Environment Canada suggests that similar consideration under Subsection 79(2) be given to species on other Schedules of SARA and under consideration for listing on SARA, including those designated as “at risk” by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC).

For more information on protection provided to wildlife under EC’s mandate:

Migratory Bird Convention Act:

<http://laws-lois.justice.gc.ca/eng/acts/M-7.01/>

Migratory Bird Regulations:

<http://laws-lois.justice.gc.ca/eng/regulations/C.R.C., c. 1035/>

Species at Risk Act:

<http://laws-lois.justice.gc.ca/eng/acts/S-15.3/page-1.html>

3. EC’s approach to migratory bird conservation, under the MBCA, involves many partners across Canada and internationally to maintain the diversity and abundance of migratory birds that spend part of each year in Canada. EC is a signatory to international plans, such as the North American Waterfowl Management Plan, and has developed various national conservation plans for other migratory bird groups (e.g., Landbirds, Shorebirds and Waterbirds). EC and its conservation partners have integrated migratory bird conservation efforts through the North American Bird Conservation Initiative (NABCI). As part of NABCI, Bird Conservation Strategies were developed for all regions in Canada presenting EC’s migratory bird conservation priorities and a comprehensive overview of conservation needs. The ‘Bird Conservation Strategy for Bird Conservation Region 3 (Prairie and Northern Region: Arctic Plains and Mountains)’, most relevant to the Project under assessment, is available at:

<http://www.ec.gc.ca/mbc-com/default.asp?lang=En&n=26502ECF-1>

Under SARA, once a species is listed on Schedule 1 as 'Special Concern', the Competent Minister must prepare a 'Management Plan'. Management plans must include measures for the conservation of the species. Management plans must be completed within three years of listing for species of special concern.

EC anticipates posting management plans for Peregrine Falcon and Short-eared Owl in 2015-2016.

For more information on the 3-Year Recovery Document Posting Plan: <http://www.sararegistry.gc.ca/default.asp?lang=En&n=09A60D9E-1>

EC has posted a "proposed" Management Plan for Rusty Blackbird on the SARA Registry. It is available at:
http://www.sararegistry.gc.ca/document/default_e.cfm?documentID=1528

4. Under the *Mackenzie Valley Resource Management Act* (MVRMA), the Review Board is responsible for determining the significance of effects of the Project during this environmental assessment (EA). Within the Mackenzie Valley, EC provides specialist or expert information or knowledge to the Review Board and to licensing authorities, in accordance with the expertise that the EC has available as required under the MVRMA. EC's approach to EAs involves science assessment and legal compliance review. The science assessment is undertaken by relevant EC experts and is guided by the best available information. When preparing advice on potential wildlife impacts of a proposed project, EC considers the status of impacted species (e.g., SAR status, priority species outlined in Bird Conservation Strategies), status of impacted wildlife habitat (e.g. protected areas, critical habitat as identified under SARA, key migratory bird habitat sites), information in recovery documents and management plans, and compliance to relevant federal wildlife acts and regulations.

CEAA and EC have published some guidance documents that may also be relevant to this request.

Reference Guide: Determining Whether A Project is Likely to Cause Significant Adverse Environmental Effects:
<https://www.ceaa-acee.gc.ca/default.asp?lang=En&n=D213D286-1&offset=1&toc=show>

Addressing Species at Risk Act Considerations Under the Canadian Environmental Assessment Act for Species Under the Responsibility of the Minister responsible for Environment Canada and Parks Canada:
http://publications.gc.ca/collections/collection_2010/ec/CW66-281-2010-eng.pdf

Government of Canada Coordinated Responses to Applicable IR's		
IR	Department	Response
IEMA #52	Environment Canada	See attached letter
MVEIRB #77	Environment Canada	See attached letter
MVEIRB #77	Fisheries and Oceans Canada	The Mackenzie Valley Environmental Impact Review Board requested that all parties state their views, for each of the key lines of inquiry (except alternatives), on Dominion's choice of assessment endpoint for characterizing significant impacts. Fisheries Protection Program's response in regards to its mandate only: The choice of assessment endpoint selected by the proponent for fish (i.e. ongoing fisheries productivity and self-sustaining and ecologically effective fish populations) respect Fisheries and Oceans Canada-Fisheries Protection Program goal in providing for the sustainability and ongoing productivity of commercial, recreational and Aboriginal fisheries.
MVEIRB #77	Transport Canada	<p>Transport Canada (TC) appreciates the opportunity to participate in the commenting and review of Dominion Diamond’s Jay Project proposal as requested Mackenzie Valley Environmental Impact Review February 27, 2015 letter. Information requests were submitted by parties on February 23 using the Online Review System. The Mackenzie Valley Environmental Impact Review directed an information request to all parties; MVRB IR # 77 Approach to significance determination. Transport Canada has reviewed Table 6.2.1 of the Developer’s Assessment Report for the Jay Project in accordance with our departmental mandate pursuant to the Navigation Protection Act. Based upon Transport Canada’s review on the developer’s approach to significance determination, Transport Canada has no comment to provide the Mackenzie Valley Environmental Impact Review Board regarding Dominion Diamond's framework for significance, which includes the Key Lines of Inquiry and Dominion Diamond's choice of assessment endpoints for characterizing significant impacts.</p> <p>Should you have any questions pertaining to these comments, please contact me via email at christopher.aguirre@tc.gc.ca or by telephone at (204) 984-2615.</p>
LKDFN #21	Aboriginal Affairs and Northern Development Canada	Post-Devolution, Aboriginal Affairs and Northern Development Canada's responsibilities under the environmental agreement for Ekati are now exercised by the GNWT, including the decisions for these board appointments.