



**MAY 19 2016**

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VIA EMAIL & FAX

Dear Chiefs:

**Report of Environmental Assessment and Reasons for Decision for Dominion Diamond Ekati Corporation's Jay Project (MVEIRB file number EA1314-01)**

As you are aware, on May 19, 2016, the Government of the Northwest Territories (GNWT) Minister of Lands, as the Minister with delegated authority under the *Mackenzie Valley Resource Management Act* (MVRMA) and on behalf of the other responsible ministers (RMs) adopted the Mackenzie Valley Environmental Impact Review Board's (MVEIRB or Review Board) recommendation that Dominion Diamond Ekati Corporation's (Dominion or the developer) proposed Jay Project (the Project) be approved subject to the implementation of the mitigation measures and developer's commitments in the Review Board's *Report of Environmental Assessment and Reasons for Decision* (the Report). The territorial responsible ministers with jurisdiction in relation to the Project are the Minister of Lands, the Minister of Environment and Natural Resources, and the Minister of Health and Social Services. The federal responsible ministers with jurisdiction in relation to the Project are the Minister of Transport and the Minister of Fisheries, Oceans and the Canadian Coast Guard as consolidated by the Minister of Indigenous and Northern Affairs.

The GNWT thanks the Yellowknives Dene First Nation (YKDFN) for its detailed response letter dated April 4, 2016 and active participation throughout the environmental assessment (EA) of the Project. This letter responds to the YKDFN's letter to outline some of the considerations taken by GNWT RMs in reaching their decision with respect to the Review Board's recommendation. It is clear from YKDFN's letter that much thought was given to the measures

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recommended by the Review Board in the Report and the views of the YKDFN as to how the measures would prevent likely significant adverse impacts to the environment and therefore accommodate potential adverse impacts to YKDFN's asserted or established Aboriginal and Treaty rights.

In addition to GNWT's comments that follow in this letter, GNWT notes that the Government of Canada (GoC) will also be responding with a separate letter to address YKDFN's concerns in areas that are within the GoC's jurisdiction. Both the GNWT and the GoC have carefully considered YKDFN's comments and have given full and fair consideration to the views expressed. GNWT and GoC share the view that the concerns YKDFN has raised with respect to potential adverse impacts on YKDFN's asserted or established Aboriginal and Treaty rights as a result of the Jay Project have been meaningfully addressed through the EA process.

While the YKDFN letter expressed support toward many of the principles guiding the measures recommended by the Review Board in their Report, the YKDFN expressed concern regarding the ability of the measures to deliver on the principles they were designed to achieve.

This letter responds in detail to the YKDFN's concerns and suggestions. In this response there are instances where the GNWT is able to make a commitment with respect to the issues or concerns the YKDFN has raised in its letter. There are also instances where the GNWT believes that changes to the wording of the existing measures in the Report are unnecessary, based on the existence of other forms of accommodation that address the underlying concern, or because the existing measure(s) allows for the YKDFN's suggested course of action to take place.

#### Impacts to water

With respect to water, YKDFN states support for recommendations by the Independent Environmental Monitoring Agency (IEMA) and the Deninu Kué First Nation. Impacts to water are addressed in six measures in the Report: 4-1, 4-2(a), 4-2(b), 4-3, 4-4, and 5-1; further, measures 13-1, 13-3 and 13-4 require annual reporting and adaptive management of the measures. The GNWT agrees with the Review Board's determination that likely significant adverse impacts to water will be prevented by the implementation of the above-noted measures as well as developer commitments as outlined in the Report. YKDFN will have the opportunity to provide views on water quality to the Wek'èezhii Land and Water Board (WLWB) during the regulatory phase.

Impacts to fish and fish habitat

YKDFN also states support for the recommendations of IEMA regarding fish and fish habitat. RMs agree with the Review Board's determination that likely significant adverse impacts to fish and fish habitat will be prevented by the implementation of Measure 5-1, as well as the implementation of measures 13-1, 13-3, and 13-4 which require follow-up, adaptive management, and reporting on measure effectiveness. Reporting on developer commitments is also required by these measures. YKDFN will have an opportunity to provide views regarding fish and fish habitat to Fisheries and Oceans Canada during the federal regulatory process of a *Fisheries Act* Authorization.

Impacts to caribou

The GNWT, as well as MVEIRB, heard and understand the concerns raised by YKDFN and other Aboriginal governments and organizations, with respect to the current decline of the Bathurst caribou herd. The GNWT also heard and understand the concerns regarding the potential for the Project to add to these impacts. GNWT acknowledges that the Bathurst caribou herd has experienced a rapid population decline in recent years.

MVEIRB stated in its Report that human activities and climate change related trends have or will cumulatively affect the Bathurst caribou herd. MVEIRB also stated that additional stresses, regardless of their magnitude, to the Bathurst caribou herd, a herd already experiencing cumulative effects, will be significant. To mitigate the residual effects of the Project so that they are not significant, MVEIRB requires Dominion to improve the design and use of roads, minimize and manage dust, use the rest of the Ekati site to offset the Project's remaining cumulative impacts to caribou, and use Traditional Knowledge (TK) more effectively in caribou research.

The Review Board has set out in the Report a suite of seven measures designed so that likely significant adverse impacts to the Bathurst caribou herd from the Project are no longer significant. RMs concur with that determination.

The Review Board's measures and the developer's commitments are not the only form of accommodation that will prevent likely significant adverse impacts to the environment and therefore accommodate potential adverse impacts to YKDFN's asserted or established Aboriginal and Treaty rights. Other forms of accommodation include the existing Ekati Environmental Agreement (Environmental Agreement) and Socio-Economic Agreement (SEA),

and commitments made by the GNWT during the EA process. The GNWT notes that the Environmental Agreement includes the requirement of management plans as well as monitoring programs for air, aquatic life, and wildlife; closure and reclamation plans are other requirements that exist as accommodations. The Environmental Agreement also established IEMA, which has a mandate to serve as a public watchdog of the developer and of the regulatory process for the Project.

Many initiatives are also underway to manage both the Bathurst caribou herd and its range. GNWT notes YKDFN's participation in a variety of the forums available to discuss management actions for herd recovery and looks forward to YKDFN's continued input in these processes. Taken as a whole, the GNWT believes the measures, developer's commitments, and the above-described existing accommodations will prevent likely significant adverse impacts to caribou as a result of the Project.

Over the course of the EA process, the Review Board heard ample evidence from all parties and, as noted by the YKDFN, concluded there would be, without mitigative measures, significant adverse impact of the Project on the Bathurst Caribou herd. In reaching its final recommendation, the Review Board also determined that the likely significant adverse impacts to caribou would be prevented with the suite of measures and developer's commitments. In adopting the recommendation of the Review Board, RMs agree with that determination.

With respect to the specific concerns identified by YKDFN, GNWT notes that YKDFN has emphasized the importance of implementing innovative actions to mitigate impacts to caribou. The GNWT agrees and notes that the Caribou Offset and Mitigation Plan (COMP) would qualify as one such innovative action.

#### Impacts to caribou: Measure 6-1

The YKDFN letter suggests a modification to Measure 6-1, proposing the accelerated testing of chemical dust suppressant at the existing Ekati mine, before its application on the Jay road. Further, YKDFN proposes the incorporation of TK into the evaluation of the effectiveness of the dust suppressants. GNWT believes that the addition of the suggestion to accelerate chemical dust suppressant testing is unnecessary. As indicated in a response to a hearing undertaking (UT2-06), and solidified in Measure 6-2(a), Dominion is currently completing a pilot test application of an alternative dust suppressant (EnviroKleen 2800). If successful, results from the program would be applied throughout the Ekati mine site, including the Project.

Regarding the request that TK be incorporated in the evaluation of the effectiveness of the dust suppressants, GNWT notes that Measure 6-1 does not preclude the use of TK as described in the request by YKDFN. In fact, Measure 6-1 includes the requirement for the use of TK when designing the Caribou Road Mitigation Plan (CRMP), and project components such as the Jay road. Given the developer's commitments to incorporate TK into all project components, the GNWT is confident that the developer will continue to do so.

The current methodology for testing the effectiveness of the EnviroKleen includes the development of final methodology. In Dominion's undertaking response where the study is described, it is stated that the proposed methods will be circulated for discussion after the completion of the dust suppression pilot project report. The opportunity for TK to be included in the final methodology for the dust suppression study therefore exists currently; a modification to Measure 6-1 is therefore unnecessary in the GNWT's view.

Impacts to caribou: Measure 6-2(a)

YKDFN feel that the "experimental" COMP should be first tested at the Ekati mine to determine if the measures are capable of reducing impacts from the mine on the Bathurst caribou herd. The GNWT notes that while the COMP is a novel and innovative mitigation for caribou in the north, offsets for caribou exist elsewhere across Canada. Determining if the caribou offset and mitigation measures are capable of reducing impacts from an operating mine on the Bathurst caribou herd before being deployed at the Project is unnecessary. The measure's adequacy will be tested and reported on through the annual reporting requirements of Measure 13-1, 13-3 and 13-4. Finally the GNWT would like to note that Measure 6-2(a) requires the developer to apply mitigation actions from the COMP to the Ekati mine site. Application of the COMP at the Ekati site will allow for, as the YKDFN requested, testing of the measure's effectiveness.

YKDFN also request that traditional land-user observations and TK be incorporated in the evaluation of the effectiveness of any offsetting mitigation. The GNWT notes that Measure 6-5 and 13-2 provide for the opportunity for traditional land-users and TK input on caribou mitigations. Neither Measure 6-5 nor 13-2 precludes the input from traditional land-users or TK into the evaluation of the COMP effectiveness. Taken together, the GNWT believes that it is unnecessary to modify Measure 6-2(a).

Impacts to caribou: Measure 6-2(b)

YKDFN's letter is supportive of Measure 6-2(b) but also requests that measurement of the offset should incorporate traditional land-users and TK. The GNWT is pleased to commit to ensuring there is an opportunity for parties, including the YKDFN, traditional land-users, and TK holders to provide input into the COMP prior to its approval.

Regarding the comment that the research results be translated to improved offsetting methods, GNWT notes that there is a requirement to implement the findings of the research and adaptively manage those components of the Project that may be impacting the environment (Measure 13-1).

Impacts to caribou: Measure 6-3

In the comments on Measure 6-3 (Air Quality Emissions Monitoring and Management Plan, AQEMMP), the YKDFN reiterate their request for accelerated research into effective and safe dust suppression methods, and that the methods be applied to Ekati as soon as possible. The GNWT notes again that the developer is undertaking a pilot study to more effectively manage dust, and has committed to a further study at the Ekati mine. The GNWT also notes Measure 6-1 requires the developer to prepare a dust management best practices document, and Measure 6-2(a) requires an enhanced dust mitigation study. These measures, along with the pilot study conducted by Dominion, addresses the concern of the YKDFN such that modifying Measure 6-3 to address this specific concern is unnecessary.

YKDFN also state that the GNWT should accelerate its stated goal of developing emissions and air quality regulations and an accompanying enforcement regime. The process, research requirements, and engagement and consultation requirements that are necessary to develop and approve regulations are considerable. The existing timeline is an aggressive one: GNWT commits to air quality regulations by March 31, 2017.

Impacts to caribou: Measure 6-4

In the April 4 letter, YKDFN notes that it anticipates the GNWT will avail itself of existing dustfall guidelines and regulations already on place across Canada in developing dustfall objectives as set out in Measure 6-4. The GNWT commits to doing so. The GNWT is also committed to looking at opportunities to include TK when developing the dustfall objective. YKDFN also requested that the GNWT consult with YKDFN members on the creation of the objective. Given the timelines imposed by the measure, and the developer's stated goal of

construction in 2016, consultation with parties to the Jay EA on the interim dustfall objectives is not possible. Once the objective is set, it will be shared with interested parties.

#### Impacts to caribou: Measure 6-5

With respect to the TK Elders group, the YKDFN notes that in order to support Measure 6-5, YKDFN and other Aboriginal groups must be involved in the design and direction of the TK-based caribou monitoring and mitigation research from start to finish. In Dominion's closing submission (page 13), hearing undertaking response (UT2-06, pages 2-4), developer commitments, and April 25, 2016 letter to government, Dominion has made it clear that Aboriginal parties to the Jay EA will be involved in collaborative research programs regarding the Bathurst caribou herd. This wording in the measure, which does not preclude Aboriginal governments and organizations from being involved in the collaborative research program from pre-construction to closure, along with the developer commitments, addresses the concern above from YKDFN.

The GNWT is pleased to note the YKDFN's statement, giving credit to the developer for seeking YKDFN's input in the form of TK, noting also YKDFN's concern with the uncertainty as to how the TK has been used to inform Project decision-making. The GNWT is confident that given the measures in the Report that state explicitly where TK is to be included in project design, operations, and closures, and the annual reporting requirements required by the measures, that clarity will be provided as to how and where TK informed project decision-making.

#### Cultural aspects and traditional knowledge

The YKDFN state in their letter that they disagree with the conclusion of the Review Board, that the "suite of Dominion's mitigations and commitments, combined with the measures identified in the Report, will serve to mitigate impacts from the Jay Project to this culturally important species [caribou]." The letter goes on to state that there is "little to no evidence that the proposed measures will be sufficient to offset the impact that the Jay project will have on the Yellowknives' culture and traditional practices." Further YKDFN states that to preserve their culture, they must be able to practice it. Measures 7-1 and 7-2, according to the YKDFN letter, are not enough to prevent the impacts to culture as the Project impedes hunting, travelling on the land, speaking the language, and practicing the traditional way of life.



The GNWT understands the concerns of the YKDFN: that there are cumulative, existing impacts that are affecting the culture, tradition and way of life of the YKDFN. It is evident from page 138 of MVEIRB's Report that these concerns were heard by the Review Board as well. To address these concerns, MVEIRB recommended Measures 7-1 and 7-2 in order to prevent likely significant adverse impacts from the Project to Aboriginal groups' cultural well-being and way of life. MVEIRB did not recommend these two measures in isolation but rather as part of a suite of 23 measures designed to prevent likely significant adverse impacts on the environment. It is clear from the discussion of caribou in Chapter 6 of the Report, for example, that the Review Board heard and understood the cultural importance of caribou and caribou harvesting to the YKDFN and other Aboriginal governments and organizations. GNWT RMs reviewed the Report and the recommended measures as an integrated package, and together with the federal RMs, adopted the Review Board's recommendation.

Food insecurity, as a result of the population decline of the Bathurst caribou herd is described by YKDFN as a socio-economic impact that has gone largely unaddressed. In its letter, YKDFN requested the GNWT work with all Aboriginal groups who rely on the Bathurst caribou herd to meet food and other socio-economic needs, to develop a comprehensive food security strategy. The GNWT is pleased to note that one of the priorities of the 18<sup>th</sup> Legislative Assembly is "Improving food security by encouraging local food production, traditional harvesting, and effective co-management of caribou herds and other wildlife."

As well, the GNWT currently supports many food security programs through their Anti-Poverty fund and programs such as Take a Kid Trapping/Gardening that train youth in life skills that support self-sufficiency through traditional and on-the-land practices. Finally, communities can raise food security as a priority when renewing their community wellness plans and use funding to develop additional programs. These programs, the commitment by the 18<sup>th</sup> Legislative Assembly, and the processes in place to manage the Bathurst caribou herd and their range, all focus on improving food security in the North. Modification to Measure 8-1 to address the food insecurity concern of the YKDFN is therefore unnecessary.

The GNWT would also like to reiterate its agreement with the Review Board regarding impacts to caribou: that the suite of measures, developer commitments, and other accommodations and processes, will mitigate likely significant adverse



impacts of the Project on the Bathurst caribou herd so that they are no longer significant. The GNWT is committed to remaining an active participant in processes in place to manage the Bathurst caribou herd.

Maximizing benefits and minimizing impacts

Regarding Measure 8-2, YKDFN states it would like to see a renewed commitment to specific hiring objectives regarding the hiring and retention of women. The GNWT notes that the developer has committed, during the EA process, to undertaking activities to reduce the barriers that exist for hiring women (Commitment 78). These activities include, but are not limited to: scholarships in support of educational attainment; the Women in the Workforce Program, which is designed to promote the training, hiring, and advancement of women in non-traditional roles; and, on a case-by-case basis, alternative work schedules for employees are evaluated. Dominion has also implemented a recruitment policy that ensures qualified female applications are given priority consideration for both traditional and non-traditional roles. To evaluate the status of the employment of women at the Ekati mine and to develop strategies to improve performance, the developer has a further suite of commitments. The GNWT is confident the developer will follow-through on implementing these commitments, as required under the MVRMA.

Impacts to air quality

With respect to Measure 9-1, YKDFN requested that MVEIRB's suggestion for the developer to conduct continuous inline emission monitoring be included as a measure to prevent a significant adverse impact. Additional wording to the suggestion was provided regarding an independent party conducting the feasibility study, and conditions for the requirement of the inline stack testing. The GNWT concurs with the recommendation of the Review Board: that likely significant adverse impacts that might result from incineration are mitigated with the stack testing and response framework described in the Report. The GNWT therefore finds that the addition of the suggestion as a measure is unnecessary.

The GNWT notes the support of the YKDFN for Measure 9-2, while also requesting a commitment to adopt practices and technologies aimed at reducing greenhouse gas (GHG) emissions. In response to an information request from the North Slave Métis Alliance, the developer committed to setting targets for reducing GHG emissions (commitment 48) for the 2016 fiscal year, and committed to continuing to set annual GHG reduction targets for the life of the mine.

### Closing

For certainty, commitments made by the developer form part of the scope of the project as assessed by MVEIRB. RMs take the position that the Review Board's recommendation is subject to the implementation of the developer's commitments. The project, as assessed and approved, therefore includes the implementation of all commitments.

GNWT would like to take this opportunity to reiterate the importance of other measures and mechanisms in place to prevent likely significant adverse impacts on the environment and accommodate potential adverse impacts to asserted or established Aboriginal and Treaty rights of the YKDFN. The Environmental Agreement is a legal instrument designed to ensure, among other things, signatories to the Environmental Agreement respect and protect land, water, wildlife and the land-based way of life essential to the well-being of Aboriginal Peoples. This obligation includes listening to community members' concerns, considering such concerns when making decisions about Ekati, and encouraging the developer to use TK in designing and implementing environmental plans and programs.

IEMA is established under the Environmental Agreement and is mandated to serve as a public watchdog of the developer and of regulatory processes related to Ekati, including participating in regulatory and other processes and making recommendations on various management plans and response frameworks. The Environmental Agreement requires Dominion to report annually on the results of its environmental monitoring programs, detailing monitoring, mitigation and adaptive management measures. Aboriginal Peoples, as defined in the Environmental Agreement, have the opportunity to review Dominion's reports and advise GNWT whether they consider the reports satisfactory. GNWT encourages the YKDFN to continue its active involvement in IEMA's activities. GNWT is providing a copy of this letter to IEMA for its consideration in carrying out its responsibilities.

The views expressed by the YKDFN in its letter are important and the GNWT looks forward to continued YKDFN participation in the regulatory phase of the Project. GNWT emphasizes that consultation and accommodation with respect to Aboriginal and Treaty rights do not end with the responsible ministers' decision. The Project will now proceed to regulatory and other processes which will include opportunities for Aboriginal governments and organizations to offer

input on authorizations and management plans and help ensure that potential adverse impacts to Aboriginal and Treaty rights, as necessary, are accommodated. The GNWT encourages the YKDFN to participate in these processes and the developer's continuing engagement initiatives.

Thank you for taking the time to provide your views.

Sincerely,



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