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YKDFN Response to the Report of Environmental Assessment and Reasons for Decision (EA 1314-01)

Yellowknife Dene First Nation

DEPARTMENT OF LAND & ENVIRONMENT

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Introduction

The Yellowknives Dene First Nation (YKDFN) have occupied the land where the Dominion Diamond Ekati mine current exist for thousands of years. As detailed throughout the EA process the Ekati mine site and the proposed Jay site have special significance to the Yellowknives. It is paramount that any development that takes place at this site is undertaken with extreme care and that this be reflected in any measures that are adopted.

Not only must measures strongly support stewardship and conservation, but they must also be supported through enforcement. YKDFN supports many of principles guiding the measures recommended by the Mackenzie Valley Environmental Impact Review Board (the Board). However, we continued to have significant concerns about the ability of the measures to deliver on the principles they set out to achieve. Most of YKDFN's concerns centre around some combination of incorporation of traditional knowledge, strength, and enforceability of the measures.

Measures and Suggestions

Impacts to Water

YKDFN support the recommendations with respect to water put forward by the Independent Environmental Impact Review Board (IEMA). YKDFN also supports Deninu Kue First Nation's recommendations with respect to impacts on water.

Impacts to Fish and Fish Habitat

YKDFN support the recommendations with respect to fish and fish habitat put forward by IEMA.

Impacts to Caribou

Yellowknives Dene First Nation is pleased with the Board's finding that the Jay Project is likely to have a significant adverse impact on the Bathurst Caribou Herd. While YKDFN agrees with the Board's determination as to the potential impact of the Jay Project on the Bathurst Herd, we differ with regard to the scope of measures that should be implemented. We support the strengthening of several measures to reflect the impact of the Bathurst Herd collapse will have on the Yellowknives and other communities.

Measure 6-1 Road Mitigation From Caribou Impacts

Less than 1% of the Bathurst herd are collared. Relying on less than 1% of the herd to inform the proponent as to the proximity of the caribou to the Jay road is problematic to say the least.

Accordingly, YKDFN would like to emphasize the importance of implementing innovative actions to mitigate impacts to caribou. It was emphasized during the hearing that research does not equal mitigation. It is essential that the research into improved monitoring for the purpose of offsetting translate to improved mitigation as quickly as is practicable.

To mitigate the effects of dust on Caribou, YKDFN proposes the accelerated testing of chemical dust suppressants at the existing Ekati mine, before it is applied to Jay Project road. Further, TK should be incorporated into the evaluation of the effectiveness of chemical dust suppressants on Caribou and the surrounding environment.

Measure 6-2(a) Caribou Offset and Mitigation Plan

YKDFN supports the objective of the offset and mitigation plan. However, we believe that measures need to be strengthened in order to meet the objectives.

Further, YKDFN feels that the experimental Caribou Offset and Mitigation Plan should be tested at the existing Ekati mine to determine if the Caribou offset and mitigation measures are capable of reducing impacts from the mine on the Bathurst Caribou Herd.

Dominion Diamond stated during the hearing that, “no offset mitigation is likely to yield changes that can be confidently and powerfully measured as different from natural variation and energetic survival and productivity (PR, 644).”. Dr. Jim Rettie of Golder Associates went on to say

“The effects of the project are anticipated to be a change in productivity of 0.3 percent, and a change in available habitat of 0.1 percent...When you have a population whose rate of productivity can change quite drastically, as well as its -- as well as the population abundance can change quite -- quite drastically, trying to detect something at a fraction of 1 percent and definitively be able to tie it to a cause and effect relationship with an offsetting activity is not practical. (PR, 644).”

In order to optimize the measurement of any potential impact of offsetting strategies, traditional land-user observations and TK should be incorporated when evaluating the effectiveness of any offsetting mitigation.

Measure 6-2(b) Research to Design and Implement Successful Offsetting Projects

YKDFN support the measure requiring the GNWT to study potential methods for measuring offset effectiveness. To this effect, any measurement of offset should incorporate tradition land users and traditional knowledge.

Further, it is essential that the research result be translated to improved offsetting methods.

Measure 6-3 Air Quality Emissions Monitoring and Management Plan

This measure aims to reduce the adverse impacts of dust on caribou so that the effects are “no longer significant”. It is far from clear that this measure will ensure that the effects of dust will not be significant. The uncertainty arises from both the lack of knowledge as to what would constitute a level of reduction that would be insignificant and uncertainty as to the ability of the proponent to reduce fugitive dust to any prescribed level.

Because of the difficulty in determining a minimum acceptable level of dust suppression, it is essential that dust be suppressed be undertaken aggressively. It has been demonstrated that dust suppression through water application is ineffective; YKDFN requests that the proponent be required to accelerate its ongoing research into effective and safe dust suppression methods, and that these methods be applied to the existing Ekati site as soon as possible. Following this, the approved method should be applied to the Jay Project.

Given the regulatory gap in dust suppression that exists in the Northwest Territories, the GNWT should accelerate its stated goal of developing emissions and air quality regulations and an accompanying enforcement regime. Similar legislation and regulations exist in other Canadian districts and the GNWT has ample material to draw on when developing its own regime.

YKDFN encourages the proponent to actively pursue dust-suppression research and testing at the existing Ekati site. Implementing the newly developed AQEMMP at the existing Ekati before the Jay project is underway is a precautionary approach that may help minimized the impact of the Jay road.

Measure 6-4 Dustfall Standards

Measure 6-4 requires GNWT to develop “an interim dustfall objective” that Dominion will use “to inform its actions to reduce impacts to caribou and caribou habitat from dustfall.” MVEIRB states that the interim objective will “reduce dust-related sensory disturbances to caribou to the greatest extent practicable” (MVEIRB, 2016, p. 238).

YKDFN agrees with the Review Board that the GNWT should establish an interim dustfall objective for all types of dustfall that may impact Caribou and their habitat. We anticipate that the GNWT will avail itself of existing dustfall guidelines and regulations already in place across Canada.

YKDFN is very concerned about the enforcement gaps that exist around this and other projects. There is no enforcement mechanism for ensuring that dustfall objectives are met. We find it difficult to be confident that this measure will reduce the project’s impact on caribou in the absence of any enforcement tools. YKDFN recommends that the GNWT accelerate the development dustfall regulations and an enforcement framework as part of its emissions/air-quality regulations.

Until such time as the GNWT develops legally enforceable dustfall guidelines and regulations, YKDFN requests that GNWT consult with YKDFN members over the creation of the objective, and incorporate YKDFN traditional knowledge into the process.

Measure 6-5 Traditional Knowledge Based Caribou Monitoring and Mitigation

In order for YKDFN to support this measure, YKDFN and other aboriginal groups must be involved in the design and direction of the research from start to finish. This will help to avoid some of the shortcomings of previous attempt to incorporate traditional knowledge.

Previously, YKDFN elders and traditional land-users have contributed traditional knowledge on wildlife, water and land use among other topics. To the proponents credit, they have been active in seeking YKDFN’s input in the form of TK. However, there has been significant confusion and uncertainty for YKDFN as how this TK has actually been used to inform decision making by the proponent.

YKDFN understands that it can be very challenging to integrate different forms of knowledge, as this is something that we have struggled with internally. This is why we feel that the only way to ensure that there is a fair and representative blending of TK with other forms of knowledge is for the Yellowknives to be involved in the research project from beginning to end including research design.

Cultural Aspects and Tradition Knowledge

Measure 7-1 Traditional Knowledge Management Framework

The Review Board states that “the suite of Dominion’s mitigations and commitments, combined with the measures identified in this REA, will serve to mitigate impacts from the Jay Project to this culturally important species.”. YKDFN cannot agree with this conclusion. 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.

The Ekati mine and other projects have already had a significant negative impact on the cultural integrity and wellbeing of the Yellowknives. There is a growing disparity in employment across gender lines. Fewer and fewer community members are able to speak the traditional Welledeh language. Waning traditional practices are the direct result of mining and development in the Yellowknives territory. Youth seldom have an opportunity to engage with elders and traditional land users in a context conducive to the transmission of traditional knowledge across generations.

With all due respect, to suggest that a TK framework (measure 7-1) and cultural camp (measure 7-2) are sufficient to address the decline of a people's culture and language belies a gross misunderstanding of the scope and significance of the challenges faced by northern aboriginal communities.

The Yellowknives, and other aboriginal groups, need to be able to actively participate in their culture to preserve it. Anything that prevents YKDFN from being able to exercise significant aspects of their cultural practices is a threat to the very existence their culture. Residential schools and colonization have taught us that culture needs to be actively protected and fought for, otherwise it can be forgotten and its practices extinguished.

The Yellowknives' culture and language is intimately linked to the land, and how Yellowknives interact with the land. To protect the culture, the land must be protected. The two cannot be separated. To suggest that the Yellowknives can stop hunting, stop travelling on the land, stop speaking their language, stop practicing their traditional way of life, and somehow still retain their culture is a logical contradiction. The Jay project impedes all of these.

Maximizing Benefits and Minimizing Impacts to Communities

Measure 8-1 Minimizing negative Socio-Economic Impacts of the Project on Communities

Measure 8-1 tasks the GNWT with identifying priority social issues at the individual, family, and community levels, assess the effectiveness of existing GNWT programs to address the issues, and implement program improvements where needed. The GNWT is required to submit an annual progress report to each affected community.

A socio-economic impact that has gone largely unaddressed is food insecurity as a result of the collapse of the Bathurst herd. YKDFN and other aboriginal groups have repeatedly made sacrifices in an effort to preserve the Bathurst herd. Our community members have refrained from hunting in our traditional territory, and anticipate having to continue to do so for years to come.

The Bathurst herd is an important food source for the Yellowknives; one that cannot be easily replaced. The community members who are most reliant on the Bathurst herd for food are the ones who are least able to meet these needs elsewhere. Traditional land users.

Due to the direct impact that the Jay Project stands to have on the Bathurst herd, YKDFN calls on the GNWT to work with all aboriginal groups who rely on the Bathurst Herd to meet food and other socio-economic needs to develop a comprehensive food security strategy.

Measure 8-2 Supporting Increased Employment Opportunities for Women

YKDFN supports this measure, but would like to see it strengthened. The Yellowknives would like to see a renewed commitment to specific hiring objectives. That is, specific minimum goals for the number of

women hired and retained. Without specific minimum objectives this measure has the potential to be fulfilled with no change or even a worsening employment statistics for women.

Impacts to Air Quality

Ambient Air Quality

YKDFN agrees with some aspects of the Board's conclusions regarding the proposed use of the GNWT's *Guidelines for Ambient Air Quality Standards* as "It provides no useful framework as a model for determining significance for any valued component besides human health.". Likewise, YKDFN agrees with the Board's assertion that the using this document as a standard fails to meet the proponent's stated goal of determining the significance of impact that air quality has on receptors such as caribou and other wildlife.

YKDFN differs with regard to some aspects of the Board's conclusion and has ongoing concerns with the lack of measures and suggestions regarding ambient air quality. YKDFN remains concerned with the total lack of enforceable air quality standards in the Northwest Territories. Further, we are concerned that the proponent has already predicted that it will exceed the standards that it proposes to adhere to. Given this, it is unclear to YKDFN how the Board is able to conclude that the Jay Project's air quality will not have a negative effect on the environment.

No meaningful assurance that the project will not significantly exceed ambient air quality standards as laid out by the GNWT's *Guidelines for Ambient Air Quality Standards* is given. This concern centers on the persistent legislative gap in enforceable air quality standards.

The Board states in its analysis that it "believes that many of the parties' concerns would be satisfied if the GNWT were to exercise its authority to regulate air quality.". In this respect the Board is mistaken. While the GNWT has stated that it is currently developing legislation to create enforceable emissions standards, it still unclear what this legislation will look like. YKDFN cannot support any speculative piece of legislation without knowledge of its contents.

Measure 9-1 Dioxins and Furans

YKDFN is pleased that the Board recognizes the serious toxic, persistent and bioaccumulative nature of dioxins and furans. However, YKDFN does not support the Board's measure 9-1 – *Dioxins and Furans* as we feel that this measure is insufficiently strict. YKDFN reasserts its support for the IEMA recommended measure that the proponent be required to perform continuous inline stack emission testing for dioxin and furan emissions.

To this effect, YKDFN feels that the *suggestion: Inline continuous emission monitoring* should be changed to a measure, with modification.

- Any feasibility study undertaken with regard to inline stack testing should be performed by an independent party.
- Further, the proponent should be required to undertake inline stack testing if it is found to be feasible and effective in improving the monitoring of dioxin and furan emissions.

Measure 9-2 Reporting on Greenhouse Gas Emissions and Management

YKDFN supports the Board's proposed measure 9-2 *Reporting on Greenhouse Gas Emission and Management*. However, we recommend strengthened wording to include a commitment to adopt practices and technologies aimed at reducing greenhouse gas emissions.

Thorough and well conducted feasibility studies on alternate energy sources are clearly important. Unfortunately, studies alone do nothing to reduce or offset greenhouse gas emissions. In order to ensure the proposed measure has the desired effect we support NSMA's proposed measure that includes commitments to specific quantitative reductions and offsets (PR#695, p. 12)

Ongoing Concerns

YKDFN must reiterate its concerns over the lack of enforceable regulations for emissions in the Northwest Territories. YKDFN has repeatedly asked the GNWT for information regarding the proposed emissions legislation. To date, we have not been able to obtain any information about what this legislation will look like, what types of minimum standards for emissions might be in place, or what existing legislation from other districts it might be informed by.

YKDFN won't speculate as to why it is taking the GNWT so long to develop enforceable emissions standards, when similar standards are in place throughout Canada. Given the current open-ended timeline YKDFN sees no reason to not expect further delays in the development and application of these regulations.

YKDFN has participated in the EA process to help ensure that the land, air and water do not unduly suffer at the hands of development. Part of this includes ensuring that territorial and national regulations are applied in a way consistent with the spirit of the enabling legislation. However, where no enforceable regulations exist, we cannot rely on an assurance that they will be in place at some future date. This is particularly true when it's unclear those regulations will be.

In short, YKDFN cannot rely on speculative legislation with speculative content and a speculative release date as a tool for the protection and preservation of the environment. At best, this would be foolhardy.

Final Comments

The Yellowknives are at a significant moment in their history. The Bathurst caribou have collapsed, traditional language use is on the wane, government regulations restrict traditional practices, there are fewer-and-fewer traditional knowledge holders, and barriers to employment persist. One of the driving factors in all of these is development on the Yellowknives' traditional territory. Throughout the EA process YKDFN has repeatedly stated that we are not anti-development; instead, we are against irresponsible development.

Yellowknives Dene First Nation culture, spirituality, language and identity is tied to the land. This is why it is paramount that development be undertaken with respect and with the long-term in mind. The Yellowknives and other First Nations were here long before any prospector and they intend to be here long after the last mine.

When the mineral companies leave, and they will, what will their legacy be? When all the diamond money has been spent and the jobs have disappeared, what will be left? Will the Dene people be relegated to stewards of abandoned pit-mines and waste rock piles? Will fish continue to still swim in

meromictic lakes? Will Caribou use migratory routes through abandoned camps? Will the land recover? These are the questions that keep the Yellowknives awake at night.

To ensure that the North does not truly become the Barrens, it is essential that strong measures aimed at protecting the land are in place. Many of these measures cannot stand on their own, however, they need to be propped up by enforcement. Measures such as those relating to air quality are sorely lacking teeth.

The GNWT has repeatedly stated that regulations and an enforcement regime are forthcoming. However, until such legislation is in hand the Yellowknives take little comfort in promises by the proponent to abide by guidelines. Unfortunately, we have had to learn some hard truths about what happens without enforceable environmental regulations.

For generations our laws, language, culture and knowledge has been discounted as unsophisticated and generally inferior to the Western tradition. In recent years aboriginal people have been pushing back against this paradigm and asserting the legitimacy of our history and knowledge. Throughout the Board's recommendations Traditional Knowledge was recognized as necessary to inform decisions made by the GNWT and the proponent. This is a good start.

The Dene peoples of the North have extensive knowledge of the land and will not be satisfied with merely informing the decisions of others. Others who have no long-term stake in the land that they intend to permanently deface. The Yellowknives Dene's rightful role is as at the table with the GNWT and the proponent as a decision maker. The role of the Yellowknives, and other First Nations, is as an equal.