



## *NWT Treaty #8 Tribal Corporation*

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July 30<sup>th</sup>, 2012

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**Re: Gahcho Kue Fish Habitat Compensation Plan**

Minister Ashfield:

We are writing to inquire about DFO's plans for Aboriginal consultation regarding proposals by De Beers Canada (DBC) to cause the harmful destruction of fish habitat in the Kennady Lake watershed during the construction and operation of the Gahcho Kue diamond mine. This includes portions of Kennady Lake and adjacent lakes within the watershed that will be permanently destroyed or physically altered, and others that will be temporarily disrupted. This fish habitat destruction will infringe upon the constitutionally protected aboriginal and treaty rights of the Akaitcho Dene First Nations (AKFNs).

Despite this impending infringement of rights, the AKFNs have not yet been consulted about DBC's approach to mitigating the destruction of fish habitat in the Kennady Lake watershed. Indeed, only late last month did DBC reveal its fish habitat compensation proposals to the AKFNs through the on-going Environmental Impact Review (EIR) of the Gahcho Kue diamond mine.

On June 29th, 2012, De Beers submitted to the Mackenzie Valley Review Board a *Gahcho Kue Fish Habitat Compensation Plan – Update* (“the Update”). In this document, DBC outlines for the first time in a fulsome manner its approach to fish habitat compensation, as well as how it proposes to implement this approach. It was only on review of this document that we became aware that DBC has been in regular discussion with DFO with the intent of developing a Fish Habitat Compensation Plan to achieve “no net loss” of fish habitat in the Kennady Lake watershed, as per DFO’s *Policy for the Management of Fish Habitat*.

Until this month, DBC’s proposals for fish habitat compensation have not been an element of review during the EIR. Save for DBC’s submission of a document entitled *Conceptual Compensation Plan* as part of the 2010 Environmental Impact Statement (EIS), fish habitat compensation plans have not been a subject matter of discussion. Indeed, the AKFNs were not privy to the contents of the *Conceptual Compensation Plan* prior to its mention in the Update. This is a function of the tremendous length of the EIS (11,000 pages constituting 18 large binders), the limited capacity of the AKFNs, and the fact that the document was buried in Appendix 3.II, which itself was not directly posted to the Public Registry or otherwise made directly available to the AKFNs.

We have recently reviewed the aforementioned *Conceptual Compensation Plan*. This document focuses upon the determination of affected waterbodies / watercourses, quantifying habitat losses, and investigating different combinations of flooding and impoundment measures that might create new lake habitat. This document does not outline any rationale for the overall habitat compensation approach proposed by DBC.

Since the release of the 2010 EIS, neither DBC nor DFO have consulted with any of the AKFNs on the consideration of an approach and options for fish habitat compensation, or the criteria that would inform the approach and options selected. Nonetheless, our review of the Update confirms that DBC, with input from DFO, has already made important decisions about the approach to fish habitat compensation it will be taking. This includes not only significant decisions on what type of habitat works DBC favors, but also how it proposes to undertake them.

We are dismayed that DBC’s habitat compensation plans have focussed on “creating new fish habitat” by raising the water level in four existing lakes west of Kennady Lake through the construction of impounding dykes to block flows and raise water levels. This flooding seems to be at least double that required for the operation of the mine itself. Purportedly, this will create a new 150 ha “super-lake” that will supposedly have “...increased depths that will improve overwintering habitat and provide conditions for a more diverse fish community”. In addition to raising water levels, DBC plans to create “...rocky shoal habitat and vegetated bays and shorelines within the newly created habitat.”

Please advise us by letter, before any further steps are taken to finalize a fish habitat compensation plan with DBC, how DFO intends to engage in a proper consultation process with the AKFNs. Specifically, we ask that DFO provide the AKFNs with the following information as soon as possible:

1. Agendas and minutes of all meetings between DFO and DBC or DBC consultants concerning fish habitat compensation planning for the Gahcho Kue diamond mine;
2. Any documentation of DFO efforts to obtain information or advice from AKFN traditional knowledge holders and fish and aquatic experts regarding fish and fish habitat in the Kennady Lake area;
3. Any documentation of efforts by DFO to consider the impact of the Gahcho Kue diamond mine on Akaitcho aboriginal and treaty rights, including the fact that the area is currently

subject to the *Akaiicho Interim Measures Agreement* and ongoing negotiations under the Akaiicho Process;

4. Any analysis by DFO of the impacts of the Gahcho Kue diamond mine on the AKFN fishery and any associated compensation proposals;
5. The details of any studies conducted by DFO and DBC to analyse the ecological, social and economic impact of the proposed compensation plan and any alternatives on AKFNs;
6. The details of any proposals by DFO to engage the AKFNs in consultations regarding the proposed compensation plan.

The Update has advised us that DBC intends to finalize a Fish Habitat Compensation Plan in September 2012. We are understandably concerned that any consultations between now and then are being done at the '11<sup>th</sup> hour' and will not provide the AKFNs with appropriate opportunities to provide meaningful input into this process. We have therefore advised our legal counsel to monitor this situation to ensure that the consultation process is commensurate with the potentially significant infringement of our Aboriginal and treaty rights.

We look forward to receiving the above information as soon as possible, and we hope that a proper consultation process between the Crown and the AKFNs on this matter can begin shortly.

Sincerely,



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Lutsel K'e Dene First Nation



Chief Louis Balsillie  
Deninu Kue First Nation



Chief Edward Sangris  
Yellowknives Dene First Nation

cc: Larry Dow - Acting District Manager, DFO  
Tony Guthrie - President and CEO, De Beers Canada  
Cathy Bolstad - Director of External and Corporate Affairs, De Beers Canada  
James Lawrance - Director, Aboriginal and Territorial Relations, AANDC  
Richard Edjericon - Chair, Mackenzie Valley Review Board  
Willard Hagen - Chair, Mackenzie Valley Land and Water Board