DE BEERS
CANADA

GAHCHO KUÉ PROJECT

August 15, 2012 File: S110

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Dear Mr. Hubert:

Response to NWT Treaty #8 Tribal Corporation Letter Regarding Gahcho Kué Fish Habitat Compensation Plan

De Beers Canada (De Beers) is in receipt of a letter from the NWT Treaty #8 Tribal Corporation dated July 30, 2012, concerning the fish habitat compensation/no net loss plan (Compensation Plan) for the Gahcho Kué Diamond Mine Project (Project). This letter from the NWT Treaty #8 Tribal Corporation was sent on behalf of the Akaitcho Dene First Nations (AKFN) compromised of the Lutsel K'e Dene First Nation (LKDFN), Deninu Kué First Nation (DKFN) and Yellowknives Dene First Nation (YKDFN). This letter was addressed to the Honourable Keith Ashfield, Minister of Fisheries and Oceans Canada (DFO), but was also posted to the Mackenzie Valley Environmental Impact Assessment Review Board (MVEIRB) Project registry. De Beers is writing to provide its response to the letter from the NWT Treaty #8 Tribal Corporation, and also to provide additional clarification on the Compensation Plan documentation and presentations for the Project, as well as to detail the opportunities to provide input and feedback on the Conceptual Compensation Plan.

The primary concern expressed in the letter from the NWT Treaty #8 Tribal Corporation is that AKFNs "have not yet been consulted" by DFO and/or De Beers regarding the Project Compensation Plan, and that "only last month [July 2012] did [De Beers] reveal its fish habitat compensation proposals to the AKFNs". As detailed below, De Beers notes that over the past 20 months AKFNs have been provided information regarding the proposed Project Compensation Plan and opportunities to provide feedback on the Project Compensation Plan on several occasions. A summary of some of these events are detailed further below in Table 1. The engagement effort undertaken to date as part of the Project environmental assessment, the MVEIRB environmental impact review (EIR) regulatory process and workshops initiated by De Beers also serve to fulfil the Crown's duty to consult.

The Conceptual Compensation Plan was discussed in the 2010 EIS (December 23, 2010) in Section 8 and detailed in Appendix 3.II. To ensure the AKFN had access to the information without relying on web access from the MVEIRB Public Registry, CDROMs of the 2010 EIS disks were mailed to AKFN representatives on the dates specified in Table 1.

De Beers also presented information and sought input on the Conceptual Compensation Plan, including proposed compensation options, during the De Beers EIS Overview Session (October 26-27, 2011) and MVEIRB EIS Analysis Session (November 28-December 2, 2011) meetings that were attended by both regulators and aboriginal representatives including AKFN representatives. At the May 22-25, 2012 Gahcho Kué Technical Sessions where AKFNs participated, matters related to the Compensation Plan were also part of the agenda and De Beers responded to related questions from parties in that process.

De Beers also took the initiative to seek further input at community meetings in February and March 2012. In April 2012, De Beers responded to 12 Information Requests (IRs) relating to the Conceptual Compensation Plan including requests from the following regulators and aboriginal groups:

- Deninu Kué First Nations (IR #4, #17, #20, # 25, #34, #36 and #39)
- Fisheries and Oceans Canada & Environment Canada (IR #55, #56, #58 and #65)
- Gahcho Kué Panel (IR #14) and
- Yellowknives Dene First Nation (IR # 2.36).

Since the submission of the Conceptual Compensation Plan, De Beers has met with DFO to discuss compensation options and move forward with development of the Compensation Plan for the Project (agendas and meeting notes for all meetings between DFO and De Beers on the fish habitat compensation plan will be submitted to the MVEIRB for placement on the Public Project Registry). To provide an update to parties, De Beers submitted the Compensation Plan-Update Memorandum to the MVEIRB Public Registry on June 29, 2012 and is currently responding to Information Requests on that submission including requests from LKDFN and DKFN.

De Beers has entered into agreements to fund Traditional Knowledge studies with DKFN, LKFN and YKDFN. The Traditional Knowledge studies provide another opportunity for the AKFNs to share their views on fish habitat and fish habitat compensation. These studies are scheduled to be submitted to the MVEIRB Public Project Registry in the fall of 2012.

At the invitation of LKDFN, De Beers also presented the Compensation Plan on July 19th, 2012. The meeting was attended by community members, Elders and Chief and Council. At that meeting, the community expressed concerns regarding raised lake options presented in the 2010 EIS and June 29, 2012 Fish Habitat Compensation Plan Update Memorandum. De Beers communicated that we are continuing to investigate options to achieve no net loss, but the final decision regarding the Compensation Plan is regulated by DFO. Fisheries Authorizations including approval of compensation plans would be completed by DFO after MVEIRB issues its decision report on the Project. At the meeting, the community requested that during the planned fall community visits that representatives from DFO also are in attendance and De Beers has communicated this request to DFO.

Table 1: Conceptual Fish Habitat Compensation Plan Documentation and Presentations

Documentation/Presentation	Recipients/Particpants	Posted to MVEIRB Registry and Mailed/Emailed Material
2010 EIS - December 2010 – Vol. 1-7 and Annexes A-N (2 disks)	MVEIRB	December 23, 2010
	Chief Edward Sangris & Chief Ted Tsetta - YKDFN	February 23, 2011
	Greg Empson – legal counsel for YKDFN	February 23, 2011
	Chief Louis Balsillie -DKFN	April 6, 2011
	Chief Antoine Michel - LKDFN	April 6, 2011
July 2011 Update - Vol.1-7; Annexes A-N & all conformity responses (1 disk)	Chief Antoine Michel LKDFN	October 13, 2011
	Chief Louis Balsillie DKFN	October 13, 2011
	Chief Edward Sangris YKDFN)	October 13, 2011
	Chief Ted Tsetta YKDFN	October 13, 2011
	Greg Empson – legal counsel for YKDFN	October 13, 2011
	Rosy Bjornson – IMA Coordinator, DKFN	October 13, 2011
	Todd Slack – Lands & Environment, YKDFN	October 13, 2011
	Marc d'Entremont- consultant to DKFN	October 27, 2011
	Henry Catholique- LKDFN	October 27, 2011
	Ron Fatt - LKDFN	October 27, 2011
	Randy Freeman – Director Lands Management - YKDFN	October 27, 2011
Gahcho Kué EIS Overview Session (October 25-27, 2011) De Beers initiated session to present on EIS Topics to parties – opportunity to ask questions/provide feedback	Randy Freeman & Todd Slack – YKDFN participated in overview sessions and emailed presentations	November 8, 2012
	Ron Fatt & Henry Catholique participated in overview sessions and emailed presentation c/o Sonya Almond, LKDFN	November 8, 2012
Hardcopy hand-outs and presentation materials emailed to parties	Patrick Simon (DKFN) and Mark d'Entremont – consultant to DKFN, participated in the overview sessions and presentations were emailed to Patrick Simon, Rosy Bjornson & Chief Balsillie	November 8, 2012
Gahcho Kué EIS Analysis Session (November 28-December 2, 2012) – Led by MVEIRB De Beers presented on EIS Topics – opportunity to ask questions/provide feedback Hardcopy hand-outs and presentation materials posted to MVEIRB Public Registry	MVEIRB – Public Registry EIS Analysis Session participants included NWT Treaty #8 Tribal Corporation, LKDFN and YKDFN	December 2, 2011

Documentation/Presentation	Recipients/Particpants	Posted to MVEIRB Registry and Mailed/Emailed Material
Gahcho Kué February-March 2012 Community Visits Handouts of all presentation materials were provided during the meetings and electronic copies were emailed upon request	Lutsel K'e – LKDFN members	February 15, 2012
	Dettah – YKDFN Members	February 9, 2012
Compensation Plan related Information Request (Round #1) Responses DKFN (IR #4, #17, #20, # 25, #34, #36 and #39) DFO (IR #55, #56, #58 and #65) (IR #14) and YKDFN (IR # 2.36).	MVEIRB Public Registry and emailed to respective parties	April 6, 2012
Gahcho Kué EIR Technical Sessions (May 22-25, 2012) – Led by MVEIRB De Beers presented its EIS Supplement and included discussion of recovery of Kennady Lake and fish habitat compensation	MVEIRB – Public Registry Technical Session participants included NWT Treaty #8 Tribal Corporation, LKDFN, YKDFN, and DKFN	May 22, 2012
MVEIRB Invitation for second round of IRs including on topic of fish habitat compensation	MVEIRB – Public Registry	June 13, 2012
Gahcho Kué – Fish Habitat Compensation Plan – Updated	MVEIRB Public Registry	June 29, 2012
LKDFN – Community Meeting Presented Draft Conceptual Compensation Plan to the Community and received input	LKDFM	July 19th, 2012
August 2012 TK Workshop	YKDFN	August 10, 2012
	DKFN	August 20, 2012
	LKDFN	August 22, 2012

As demonstrated by Table 1, De Beers has provided information concerning the proposed Compensation Plan on several occasions and there have been several opportunities for the AKFNs to provide feedback and participate in the Project EIR process. These engagement efforts also demonstrate that consultations on the Compensation Plan are not being conducted at the eleventh hour as suggested by the AKFNs. Rather, discussions concerning the Compensation Plan have been ongoing, and AKFNs have participated in those discussions. De Beers further notes that the courts have recognized that a regulatory and environmental assessment process like the current MVEIRB

EIR process for the Project can serve to satisfy the Crown's duty to consult Aboriginal groups,[1] and that Aboriginal groups are expected to express their interests and concerns and to consult by whatever means are available to them.[2]

De Beers continues to seek input on proposed and new options at the upcoming August 2012 Site Workshops and the planned fall community visits. De Beers is also targeting to have an updated Compensation Plan submitted to the MVEIRB Public Registry in the fall of 2012 which would take into consideration information provided by Aboriginal groups. As stated in February 2012 community meetings, De Beers welcomes input concerning fish habitat compensation options from communities.

De Beers is hopeful that the ADKFNs will take advantage of these upcoming opportunities to provide additional feedback on the Compensation Plan, including by way of further participation in the Project EIR process.

De Beers trusts the foregoing is satisfactory, but if there are any questions on the Fish Habitat Compensation Plan De Beers invites people to contact the undersigned with any such questions or feedback.

Yours truly,

Veronica Chisholm

Veronica Chisholm
Permitting Manager

c. The Honourable Keith Ashfield, Minister for Fisheries and Oceans
Chief Dora Enzoe, Lutsel K'e Dene First Nations
Chief Louis Balsillie, Deninu Kué First Nations
Chief Edward Sangris, Yellowknives Dene First Nations
Larry Dow, Acting District Manager DFO
Stephane Labrecque, A/Director, Aboriginal and Territorial Relations, AANDC
Richard Edjericon, Chair, Mackenzie Valley Review Board
Willard Hagen, Chair, Mackenzie Valley Land and Water Board
Matthew Spence, Director General, Northern Projects Management Office, CANOR

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[1] *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, 2004 SCC 74; *Brokenhead Ojibway Nation v. Canada (Attorney General)*, 2009 FC 484.
[2] *Mikisew Cree v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69; *Halfaway River First Nation v. British Columbia (Ministry of Forests)*, 1999 BCCA 470.