



# Yellowknives Dene First Nation

P.O. Box 2514, Yellowknife, NT X1A 2P8

December 19<sup>th</sup>, 2012

Chuck Hubert  
Mackenzie Valley Environmental Impact Review Board  
Box 938  
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Dear Mr. Hubert:

## **Re: De Beers Gahcho Kue Closing Comments**

The Yellowknives Dene would like to thank the Panel for the opportunity to present our view on the limitations of the current proposal for the Gahcho Kue project. YKDFN have tried to be as constructive as possible to identify deficiencies and provide recommendations on how to correct these issues. In our view, the failure to meaningfully address the following matters will result in significant community concern or likely result in significant environmental impacts.

YKDFN understand that they have brought difficult issues to the Board for consideration – issues which we ourselves don't have recommendations on how to adequately resolve. For years YKDFN has tried to work with government, industry and the regulatory system to ensure that these issues are addressed. At this point, 'the how' no longer matters – continued lack of results, either through inaction or ignorance is no longer acceptable. Each new proposed project causes increasing concern and First Nation's concerns are consistently being met with inaction or the refusal of government and industry to address impacts

We have paid the price of mining in this territory for generations. Giant, Discovery, Tundra – they've all left their legacy on the land that we the Yellowknives lived off. The companies that owned these projects have been gone for years. When the caribou that we live off were in steep decline, government's response was to restrict the hunting of First Nations peoples. The effects of these decisions are continuing beyond their intended timeline. The Government's decision was one sided, as no additional mitigative actions were used beyond denying the Dene people's inherent rights. As an impacted party to the Gahcho Kue project, we are seeking additional conservation action that is more holistic in its approach, addressing more than just the utilization of caribou.

If the YKDFN concerns are addressed, then not only will the risks of environmental impacts and significant community concern be minimized, but we believe this project will meet the test of

sustainable mining. Sustainability is a term often used by industry to promote their interests and in doing so they presume that the scientific definition of sustainability is acceptable. As a First Nation, we agree with the principle; let us use the land in such a way that does not degrade it for future generations' use. But in the end, it is not industry's view that tells us if the land is degraded – it is the view of the Traditional Knowledge holders that matters. If Traditional Land Users believe that the land meets their needs, it will be sustainable.

### **Part One: Follow up on Active Issues Within the Hearing**

During the proceedings, there were several new issues that came to light, both as a result of the presentations and questions, but also requests from Board staff, experts and Panel members. We have provided this information below. YKDFN believes that this addresses all of the new and outstanding issues put to us by the Panel, staff or that emerged at the hearing. However, if we have failed to address a question or request for additional clarity, YKDFN will be pleased to file any additional information.

#### **New Issue: GNWT Position – Project Pre-Approval**

The positions advanced by the responsible governments made it clear that they want this project to proceed – Premier McLeod provided clear indication that they have already made the decision to support this mine – “The GNWT maintains its qualified support for the Gahcho Kue project based on the information available”. YKDFN believe that it is inappropriate for the Premier, leader of the GNWT's responsible Minister for the Review Process, to openly acknowledge that it will support the project without hearing the full evidence and the decision of the Panel.

Later in his opening comments Premier McLeod stated that “Our government understands the benefits of diamond mining and we know how to manage the impacts” and “People of the Northwest Territories expect their government to protect their interests and ensure that Gahcho Kue project benefits Northerners”. YKDFN asserts that neither of these statements are accurate. GNWT submissions to the Panel have shown their limitations when it comes to managing impacts. As previously stated, the example of Bathurst caribou management is a clear indicator that not only does this Government not adequately manage the impacts of mining but that they also do not protect the interests of all Northerners.

#### **New Issue: GNWT Position – Enforceable Commitments**

During the questioning, GNWT repeatedly returned to an assertion where any commitments made formed ‘part of the scope’ of the project and were somehow enforceable there after. In response to questioning on Air Quality and Wildlife the proponent responded:

“the Federal Minister response to the -- to the Prairie Creek Mine that commitments are considered within the scope of the project. So when a Proponent commits to installing an incinerator, doing the appropriate monitoring, that sort of thing, those are very easy then for a land and water Board to include as -- as terms and conditions”.

When asked about this after the hearing, YKDFN were told to ask AANDC for the legal support of this position. At this point, there is no support from AANDC for this interpretation and in our reading of the Federal Response to the Prairie Creek decision, YKDFN does not agree with this position. The letter that is referred to explains that the decision on impact significance and the project proceeding was made considering the commitments were fulfilled. At no point does it provide any explanation or comfort for the current lack of enforceability.

The faith that one part of GNWT puts in the 'scope of development' approach is misplaced and untested. YKDFN believe that a commitment is not enforceable unless backed by something stronger. YKDFN have seen companies come and go, their commitments and promises left unfulfilled. We are not comfortable in simply accepting the word of mining companies for matters that are not optional.

#### **New Issue: DFO Enforcement of the Fisheries Act**

YKDFN are concerned with DFO's unprecedented interpretation of the Fisheries Act. Until recently, YKDFN technical interpretation had failed to grasp the probability of a successful fishout of the 'Water Management Pond'. With 10 metres of water left, it is very likely that this area will: a) continue to have fish in it and; b) be subjected to toxic levels of effluent and tailings – that a complete fishout is a remote likelihood.

First and foremost, this approach is not consistent with the YKDFN's belief of respect for wildlife. Through DFO's comments, YKDFN is left to understand that any fish left in the Water Management Pond will be left to slowly die – or 'impacted' in the parlance of DFO. This is wholly inconsistent with Dene law and YKDFN culture. The culture of the Dene is one of respect, taking care of the land and water means it will likewise provide healthy wildlife that Dene people need. A cornerstone of this project is to return the land to as close to its natural state as possible, if fish and wildlife are mistreated, it is unclear they will ever return to the area generations from now.

Secondly, we believe that this approach is contrary to law. Under questioning, DFO stated that they were going to 'write off' this whole area under s.35 of the *Fisheries Act*. This approach is clearly wrong. Consider:

*S.36(3): Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish...*

[Subsection 4 effectively refers to the Metal Mining Effluent Regulations which do not apply]

This wording is not ambiguous. If there are fish then DFO cannot permit their destruction – either directly or indirectly, to facilitate the development of a project that is not covered under the Metal Mining Effluent Regulations. Thus, unless the project can show that they will harvest all the fish, this project cannot be approved as proposed – YKDFN do not believe that the Panel can approve a project that does not conform to Canadian law.

**New Issue: Clarification to YKDFN Recommendations**

Panel staff questioned YKDFN and asked for clarity in the YKDFN recommendations, given the development of the Ni Hadi Yati proposal. Though it was late in the process, YKDFN feel that the proposal is much further advanced than was conveyed during the hearing. Assuming that good faith negotiations continue, we believe that this will address components of several YKDFN recommendations.

The Ni Hadi Yati proposal as it is currently conceived, amounts to a binding agreement, enforceable through contract law, but also with a dispute resolution system. This should avoid some of the inaction that has occurred with the other Environmental Agreements.

In terms of content, the objectives of Ni Hadi Yati and action items it proposes to undertake, have been addressed broadly by the participants to date. More work will take place on establishing specific goals and the scope of the group. Parties have agreed that this will require the existence of collaboratively established Wildlife Effects Monitoring Program and Air Quality Monitoring Program, each with components of monitoring and management.

If the Board adopts the proposed measures advanced in the Joint Presentation, we believe that YKDFN recommendations #1, #2 and #3 have been addressed. Furthermore, as all parties have acknowledged the need for a dispute resolution system in terms of the implementation of this agreement, we believe that this will address recommendations 7, 8, 9 and 10 that discuss the content of particular plans. These recommendations are:

***Ni Hadi Yati Related Recommendations:***

- 1) The Board must make a Measure that requires the proponent and parties to collaboratively conclude an extra-regulatory agreement that brings into being an arms-length oversight body. This body will be based on the best practices developed in the territory and the principles found in the research undertaken by YKDFN and Alternatives North (and currently found on the registry). The mandate of this body will be: To review the environmental monitoring and management proposals, activities and reports from the proponent and the regulators, making recommendations or submissions to whomever they believe necessary.

YKDFN are open to working with the Parties and the Proponent and to this end, are participating in a First Nation-led workshop aimed at developing a draft proposal for the Proponent to consider. This will likely be submitted to the registry prior to the hearing.

- 2) The Board must make a measure that requires an enforceable Wildlife Effects Monitoring Plan. This plan must be collaboratively designed (and to a large degree, already has been), with a reporting requirement similar to that of the Aquatic Effects Monitoring Program, and an agreed upon general review and approval system. Lastly, it must have an easy, efficient, and cost

effective dispute resolution system if the parties strongly disagree on matters in terms of design quality or implementation.

- 3) YKDFN believe that this (and recommendation #1) can be best addressed through the development of a contractual environmental agreement between the company and the First Nation which provides clarity in terms of roles and responsibilities; reporting, review, updating and approval mechanisms; appropriate resources to facilitate participation; and as a last resort, a simple, efficient and effective dispute resolution system. The particulars of a WEMP or an oversight approach would be jointly agreed upon plans within this agreement – but the framework that they would fit in would be a broader environmental agreement.

*Regulatory Gap Related Recommendations:*

- 7) The Board must issue a measure that requires the creation of an ongoing trans-boundary cumulative effects monitoring program across the range of the Bathurst Caribou herd.
  - a. To grant maximum flexibility, YKDFN suggest that this measure be issued in such a way that the concern has been considered to be mitigated/achieved when all parties agree that there are appropriate mechanisms in place to address this concern. This would allow the GNWT vision of an industry-government-FN collaboration with an enforceable backdrop. Once the Parties agree, further determinations can be made under the MVRMA.
- 8) The Board should issue a measure that creates an adaptive management approach for range management that this monitoring ties into – monitoring is empty unless it feeds into management decisions and at this point there is no mechanism or impetus for any type of management beyond the project specific level. Recognizing the complexities, YKDFN recommend that this to be in place within 5 years of the report of environmental assessment decision.
- 9) The Board should issue a measure that requires the proponent to collaboratively re-evaluate the impacts of this project 5 years after the Report of Environmental Assessment, with a particular focus on the relationship between developments and the recovery of the caribou herd. This evaluation should propose further mitigations to limit impacts, up to and including mothballing the mine until herd populations are healthy enough to support YKDFN harvesting or communities directly acknowledge that they are willing to accept the risk.
- 10) As part of the WEMP, YKDFN ask that De Beers be required to develop a comprehensive mitigation and monitoring plan that examines whether the Winter Access Road acts as a barrier or filter to caribou movement. As this monitoring aspect of the WEMP is deployed, the project should concurrently develop further management and mitigation options to be considered if the monitoring discovers that unforeseen impacts are occurring as a result of the road construction

and operations

*Fallback Position:*

If the Panel does not feel that it is in a position to adopt the Ni Hadi Yati Measures, the YKDFN fallback position is clear. All of the above Measures must be implemented to ensure that significant concern and environment impacts do not occur.

**New Issue: Cumulative Effects Framework**

The Panel Expert asked YKDFN to clarify expectations on the linkages between Monitoring and Management. The solution will be a collaborative approach to monitoring in which YKDFN expect to have active participation in monitoring efforts and input in the monitoring methods. As to management, we expect responsible authorities to exercise fairness and take aggressive strides to develop a co-management approach to address the cumulative impacts on the caribou herds we depend on.

Previous YKDFN management options have identified by the number of mines and the need for protection of calving and core habitats. In the 2010 submission to the Wek'eezhii Renewable Resource Board, YKDFN recommended that the GNWT consider thresholds for development and adaptive responses (4.3(1)) linked to monitoring metrics (4.3(3)). While this only represents the broad frame of an approach, it is our belief that it represents both setting value based objectives as well as numeric observation of response within the caribou herd.

This approach should be expanded to address natural phenomenon, but in the short term – the danger for herd recovery is most likely from development (especially as harvesting has been almost eliminated as a threat) – caribou numbers have always fluctuated, what we don't know is if this has or will be constrained by the introduction of widespread mining (and associated impacts) across the range.

**New Issue: Traditional Knowledge/Traditional Land Use Update**

Yellowknives Dene First Nation's Traditional Knowledge for the Gahtsotì ("Kennady Lake") area, where De Beers Canada has proposed the construction of an open-pit diamond mine (Gahcho Kué Diamond Project), strongly suggests familiarity and use that dates back hundreds if not thousands of years.

Yellowknives Dene First Nation and De Beers Canada entered into a Traditional Knowledge/Traditional Land Use Study Agreement on September 24, 2012 with a final report due date of April 30, 2013. The first phase of the study – the review of all relevant historic published materials, archaeological reports, and past YKDFN Traditional Knowledge projects relevant to the area – has provided strong base-line data on both traditional and current use of the area by members of the Yellowknives Dene First Nation. During the early months of 2013 more detailed information will be gathered through focused Elders and resource harvester interviews.

What we do know at this point in time is that the Gahtsoti area has 76 mostly pre-contact archaeological sites that were described by the Archaeologist who conducted the majority of the studies as "close to Gahcho Kué". This high density of sites in the vicinity of Gahtsoti suggests the area has a wealth of resources well known to the ancestors of the Yellowknives Dene.

We also know, from regional Traditional Knowledge studies, that an extensive trail system through the area connects the north shore of the East Arm of Great Slave Lake with the large lake to the north, northwest and northeast of Gahtsoti. These large lakes, and their traditional caribou 'swimming places', are important harvesting locations for fall caribou hunts. One of these major trails passes very close to Gahtsoti. Past TK studies have also revealed a number of favoured camping places along these trails with two sites on the shore of Gahtsoti where De Beers plans to build their mine.

We also recognize that the region is geographically unique because a northward extension of the northern edge of the tree-line reaches to within 25 kilometres of Gahtsoti. Traditional Knowledge tells us that lakes at the edge of the tree-line are favoured base-camp locations for hunts onto the Barrens and in particular into the area surrounding the location where De Beers has proposed their Gahcho Kué Diamond Project.

The YKDFN is concerned that during the construction and operation of the proposed mine this well established use of the area will be seriously disrupted. We are also concerned that after closure the area will not support the re-establishment of traditional land use practices and we request that the Panel require De Beers to complete a comprehensive closure plan that will:

- ensure that the water in Gahtsoti ("Kennady Lake") is clean and potable, reflecting the high quality of the water today
- that the pre-mine fish population in the lake be restored and that the fish are good to eat,
- that camp locations on Gahtsoti be returned to a usable state, reflective of the current healthy nature and similar to the surrounding area, and
- that there are no physical barriers to travel through the area and that the trail system in the immediate vicinity of the mine be returned to a state reflective of what exists today.

## **Part Two: Reviewing YKDFN Concerns and Recommendations**

### **Issue 1: Economic Principles**

In the broad sense, YKDFN agree in principle with the tenets of development that the De Beers' Chief Operating Officer mentioned on Wednesday December 5<sup>th</sup>, 2012:

- We agree that this project cannot proceed if it puts at risk the ability of future generations to meet their needs. The YKDFN are not willing to exchange the ability to practice their traditional lifestyle in exchange for mineral exploitation.
- The opportunities associated with this project are about choices. Choices that balance the environment and development.
- YKDFN agree that development in the territory has had benefits. YKDFN agree that the potential benefits of this project are important.

However, we mustn't forget that every development has two sides. For generations the YKDFN have paid the price so that others can benefit. The Yellowknives Dene are resolved that in the future, they will benefit from the development that is occurring on their traditional territory. As currently conceived this project provides limited benefit to the Yellowknives Dene members.

The GNWT has made its position clear – they just want mines open. On Dec. 18<sup>th</sup>, 2012 GNWT Industry Minister Dave Ramsay stated "Given the labour market and the fact that we want to see these mines remain open, companies have to do what they have to do to keep their doors open and that's just a fact of life"<sup>1</sup>. While they are content to see these resources and benefits flow south – as they always have – YKDFN are not. Once the resource is depleted, it's gone for good. Recall that at the hearing, GNWT implied that there were Measures that could be adopted should the economic commitments not be met. Reviewing results of past socio-economic agreements has shown that the projects will not fulfill their promises – and the GNWT will not hold the company to account.

The project has failed to adequately acknowledge is that the benefits associated with this mine are limited until after the existing mines are closed – 2019 or so. Even once that occurs the benefits available will be limited as this project will already be completed staffed and operation. Simply put, the number of available members to take these positions is limited – unless that pool grows, either through training of more effective removal of barriers, this size of the labour force is not going to change much.

YKDFN do not need an economic analysis to know that the majority of the employees at this site will only ever see the Yellowknife airport as they travel to site from their origins in the south. Ekati and Diavik have northern participation rates exceeding 50% with a significant proportion of Yellowknives Dene members. Snap Lake's participation rate is 36%. YKDFN are convinced that the effective rate of

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<sup>1</sup> <http://www.cbc.ca/news/canada/north/story/2012/12/18/north-mines-workforce-targets-nwt.html>



northern hiring will be even lower at this site.

We believe that the Panel, at heart, knows this as well – as northerners, we all know the employment reality. We know that most of the people working at the mines are from the south. We know that the vast majority of dollars is flowing south. We all know the barriers that prevent our members and neighbours from getting jobs if they want them. And in the end, we all know that adding another 300 jobs and contracts in 2014 doesn't help.

The YKDFN solution is to asking the Board to commission a study to provide for an economic analysis that takes into account what we all know – something that considers how to optimize this project for those of us who live up here, not the territory GDP or Alberta or anywhere away. Something where the assumptions that lead into the modelling are based in the real world, based on what we all know to be true. For this project to be acceptable to YKDFN, they have to real benefits. With the current plan, this project is not acceptable.

#### **Issue 2: Cumulative Effects Across the Bathurst Caribou Range**

The YKDFN tried to establish the current approach with regards to cumulative effects monitoring and management for the area used by the Bathurst Caribou herd. Regardless of the perspective, one aspect is clear. The approach, such as it is, has been ineffective and not produced results or a framework for the parties to participate in.

Cumulative Effects have been a priority issue for developments in the north since 1996:

*Throughout the review the cumulative effects of potential future developments in the region was of much greater concern than the effects of any additional pits that BHP may open on its claims block. This concern was heightened by the fact that there has been little industrial development in the region and that available baseline information for cumulative effects assessment is limited. Two cumulative effects already of concern are the effects of exploration in general, and of increased traffic on the Echo Bay winter road, in particular. The effects of these activities on wildlife were frequently raised during the review. The panel concludes that further work is needed on the cumulative effects of exploration activities on wildlife in the region and believes that government and the WKSS should ensure that this is done.*

From the June 1999 Diavik Comprehensive Study Report:

*While the RAs are satisfied with Diavik's cumulative effects analysis and follow-up programs, the RAs also conclude that a regional cumulative effects assessment and management framework is required to consider existing and potential impacts from all development in the Slave Geological Province to support sound decision-making and adaptive management.*

A number of Caribou initiatives have echoed these matters – the 2004 Bathurst Caribou Management Plan, the 2007 Caribou Summit report, the 2009 Bathurst Caribou Joint Proposal. During their Gahcho Kue Hearing presentation, in addressing cumulative effects, GNWT assured parties that they are listening to the concerns of Northerners. For YKDFN, the GNWT's management action is not coming

quickly enough – they continue to talk of the future. . The Caribou Strategy has yet to be implemented – it is another nice document; meanwhile many YKDFN members have been forced to go without caribou meat for two years. They told us that they were hiring a new Cumulative Effects specialist; the same answer as in May during the Fortune EA. They spoke of addressing Cumulative Effects in the 2005 Bathurst Caribou Management Plan, in the 2007 Caribou Summit, the 2010 submission to the WRRB.

During the hearing YKDFN asked GNWT “has GNWT undertaken any actions that pertain to land management that may have reduced the impacts to the caribou we’re seeing on the land rather than just harvesting?” to the answer “I’m not really sure where Mr. Slack wants to go with this, but the land management, particularly on Crown land, is under the federal government. And they would likely need to -- to -- to -- to ask that question of -- of Aboriginal Affairs rather than GNWT.” GNWT provided the answer why we were asking this question a few minutes later. “Particularly, given the fact that currently the federal government is the land manager, I -- I really can't see how we could do cumulative effects -- build a cumulative effects program without them.” YKDFN agree and sought to understand the level of Federal Government effort in evaluating cumulative impacts.

During questioning, the Federal Government provided the results to date for their CIMP program. Focus on the Bathurst Herd has been absent, the projects are small and haphazard. We do not believe that this has significantly contributed to our understanding of cumulative effects, especially from an ongoing management perspective. During that period, AANDC mentioned that they also rely on the Nunavut General Monitoring Program. YKDFN were unfamiliar with this program. However, NTI recently won a significant legal judgement against Canada for “failing to develop a general monitoring program as required by Article 12 of the Nunavut Land Claims Agreement” (Nunatsiaq Online, June 28<sup>th</sup>, 2012). The failure to implement this program almost certainly means that the level of information from that program is deficient as well.

All of this means that we are at the same decision point as 1996, though there are 250000 less caribou. Which begs the question from the YKDFN, when will something meaningful start to happen? What good is the system if it only writes reports acknowledging need? YKDFN hope that government initiates meaningful action towards putting in place appropriate Cumulative Effects Monitoring and Management, but to expect something different at this point after 15 years of inaction is not reasonable. Evidence shows us that this Board has to make it requirement. It wasn’t a requirement in 1996, it wasn’t in 1999, and it wasn’t for Snap Lake.

If this Panel does not make this a requirement, it will not occur.

YKDFN are asking for the Panel to use their wisdom to require the necessary structure to be in place as a requirement for this project to proceed. We have framed our Measure in a way that provides flexibility and opportunity for the Parties, Government and Industry to work together is establishing the road forward – but the key is that it must be established before this development can proceed.

**YKDFN Recommendation #4 & #5:**

- 4) The Board must issue a measure that requires the creation of an ongoing trans-boundary cumulative effects monitoring program across the range of the Bathurst Caribou herd.
  - a. To grant maximum flexibility, YKDFN suggest that this measure be issued in such a way that the concern has been considered to be mitigated/achieved when all parties agree that there are appropriate mechanisms in place to address this concern. This would allow the GNWT vision of an industry-government-FN collaboration with an enforceable backdrop. Once the Parties agree, further determinations can be made under the MVRMA.
- 5) The Board should issue a measure that creates an adaptive management approach for range management that this monitoring ties into – monitoring is empty unless it feeds into management decisions and at this point there is no mechanism or impetus for any type of management beyond the project specific level. Recognizing the complexities, YKDFN recommend that this to be in place within 5 years of the report of environmental assessment decision.

**Issue 3: Closure**

The Yellowknives Dene are very concerned that the approach that the company has brought to cumulative effects amounts to a low bar. As described by Michel Paper at the end of the hearing, the Yellowknives Dene have seen large parts of their territory degraded by industry. The proponent has acknowledged that there is a need to appropriately close the site – but YKDFN are concerned on the level of detail provided and the different interpretations of the words used. There is a significant difference between the company approach and YKDFN expectations.

For example, the company has arrived at a point that changing the water quality thousands of percent and having perpetual exceedences of CCME water guidelines is 'acceptable'. YKDFN do not agree. We believe that clarity should have been established during the initial stages of this EA – rather than shifting the burden to some point in the future. Simply re-establishing an ecosystem is not acceptable – Baker Creek had an aquatic ecosystem in the past but it was hardly desirable. The Yellowknife River has an ecosystem that is missing one of the cornerstones. It is not enough for the site not to poison things after closure – trading pristine land and water over perpetuity for 11 years of extremely limited potential benefits (under the current proposal) is not acceptable. Both parts of that balance must be improved.

The Yellowknives Dene have an innate connection to the land – they have survived on this land since time immemorial, the judgement of the elders meant survival – they know good land and water. They must be involved, and must set forth the remediation standards in a process which must be completed as quickly as possible. The regulatory process is slow and the barrier for initial acceptable is low, thus YKDFN are asking for a thorough plan to be undertaken in partnership with communities, to ensure that the land, when returned from being borrowed, is in a shape acceptable to those who relied on it.

**Recommendation #11**

- 11) YKDFN are only requesting that the Board require the spirit of their Terms of Reference be met by issuing a measure that requires the development of a preliminary closure plan that meets these terms. This issue isn't an afterthought or peripheral matter; it is one of the KLOI and should have been fully addressed.

The development of this closure plan should be done in collaboration with communities and according to best practices developed with industry, to be completed within one year of the Report of Environmental Assessment. If the plan cannot be successfully completed with consensus, then this would represent a significant risk and the Board should be required to intervene.

**Issue 4: Traditional Knowledge**

YKDFN want to see meaningful incorporation of Traditional Knowledge into the operational approach of the mines – not just the initial TK collection. The expertise of the landusers is not singular – it isn't an instance, it's an ongoing, multi-theme approach. YKDFN are bringing this to the Board because it is the best opportunity to ensure that it occurs in an effective manner. The company has made a commitment to improve TK collection, but with a Measure, YKDFN will have a stronger framework to ensure that this occurs as it falls into an area of unclear or ineffective regulation.

**Recommendation #12:**

- 12) To ensure that this does not become an idle commitment, YKDFN ask the Panel to issue a measure that requires the project to develop a framework to gather and incorporate this knowledge in collaboration with the knowledge holders. The test of success for this measure will be met when consensus exists between the parties that a good faith effort has been made to address the intent.

**Issue 5: Caribou**

The well being of Caribou is the central day-to-day concern of the Yellowknives Dene First Nation when considering the impacts of development. The current situation, consequential conservation and unprecedented imposed restriction of Treaty Rights is an ongoing significant impact and all developments must be evaluated in that light. The *interim* restrictions are into their third year now – with no sign that they will be lifted in the upcoming years.

If this mine limits the recovery of the Caribou herd in any way, that would perpetuate the hardship being felt by the membership. Thus, YKDFN are asking the Panel to require the proponent to initiate a review that examines this concern as a measure of approval – to consider what has happened in the period between approval and operation. YKDFN are not content to have this approval issued and then have no further consideration of potential effects to the herd as a result to the mine – events have shown that GNWT has a limited management scope and AANDC is not interested in pursuing any

alternative management options.

**Recommendation #6:**

- 6) The Board should issue a measure that requires the proponent to collaboratively re-evaluate the impacts of this project 5 years after the Report of Environmental Assessment, with a particular focus on the relationship between developments and the recovery of the caribou herd. This evaluation should propose further mitigations to limit impacts, up to and including mothballing the mine until herd populations are healthy enough to support YKDFN harvesting or communities directly acknowledge that they are willing to accept the risk.

**Issue 6: Air Quality Enforcement**

GNWT adopted a novel approach to the particular enforcement of Air Quality matters and we support the search for solutions. However, what we have deep concerns with is that the approach places the burden on other groups, namely the Land and Water Boards and AANDC's inspectors, without clarifying that they agree on the approach. This lack of consultation and verification may result in the false sense of security that concerns are being accommodated without actual providing this – which is worse than acknowledging the failure.

The failure to enforce or create meaningful terms is essential. The GNWT position that enforcement is not an issue is not supported by evidence or history. Snap Lake has not faced the same degree of issues with regards to incineration and emissions that the other mines have precisely because it was written into the environmental agreement for that site. Government does not, and has not sought, an environmental agreement. They referenced a Memorandum of Understanding, which has not been completed, is not likely to be public, and given the approach to date, is likely to be unenforceable.

Ekati and Diavik have operated out of compliance for years despite the efforts from Parties and the oversight groups. Thus, evidence and history tells us that enforcement is not only one of the bigger issues, it is the first issue to be addressed – once you have a means of enforcing the issue, then no longer can your concerns be ignored for 15 years.

**Closing**

The Yellowknives Dene approach to this development has had two themes – maximize benefits, minimize impacts. This is the obvious standard for any development and we acknowledge the projects efforts to this end. However, the current proposal does not nearly go far enough. By implementing the Measures suggested by YKDFN, this may be the first mineral exploitation project in the Territory to truly approach sustainable mining.

Our elder's and ancestors have selected the Chief Drygeese Territory and charged us with protecting the land for the future. Part of this duty means that any development that occurs is done in a way that when the land is handed back to us it will allow us to effectively meet that responsibility. That is the burden

that we bear. Our concern with the level of development across the range of the wildlife that we depend on and have to protect is significant, especially because of the many unknowns. These are the things that we must first address before considering the economic benefits and the balance of pro's and cons and this forms the basis of the recommendations that we have provided to the Panel.

We thank the Panel for their consideration – we have sought to work with the Parties, the Regulators and the Proponent wherever possible and hope to continue this approach in the future – if and when this project proceeds. We have tried to suggest flexible measures for the ease of implementation and have sought to provide as much clarity as possible. Absent the imposition of the measures suggested, YKDFN strongly believe that the benefits will again pass by the YKDFN while once again; our future generations are required to pay the bill for the negative environmental effects.

Sincerely,



Chief Edward Sangris  
Yellowknives Dene First Nation (Dettah)

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