

JUN 04 2020

President Stanley Anablak
Kitikmeot Inuit Association
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By Email

Dear President Anablak:

Responsible Ministers' Decision to Adopt the Recommendation of the Mackenzie Valley Environmental Impact Review Board and Allow the Diavik Diamond Mines Inc.'s Kimberlite Deposition Proposal to Resume the Regulatory Process

The responsible ministers from the Government of the Northwest Territories (GNWT) and the Government of Canada (Canada) have recently concluded the decision phase for the environmental assessment of Diavik Diamond Mines Inc.'s (Diavik) proposal to store processed kimberlite in pits and underground (the Project). Their decision was to approve the Project subject to the implementation of six measures and the commitments from Diavik.

Previous communication with the Kitikmeot Inuit Association

On February 19, 2019, the Mackenzie Valley Environmental Impact Review Board (Review Board) referred the Project to environmental assessment. The GNWT and Canada wrote to the Kitikmeot Inuit Association (KIA) on March 15, 2019 to advise you of potential government decisions relating to this Project. The letter also noted that both governments would be relying on the Review Board's process to assist in fulfilling Aboriginal consultation requirements in relation to the Project. Both governments also encouraged the KIA to participate in the Review Board's process.

Responsible ministers also wrote to KIA after the Review Board released its recommendation. In concluding its environmental assessment process, the Review Board released its *Report of Environmental Assessment and Reasons for Decision* (REA) on January 6, 2020. The GNWT and Canada wrote to you at that time to continue dialogue regarding potential responsible ministers' decisions relating to the Review Board's findings in the REA. Responsible ministers also asked the KIA if the REA addressed concerns as they relate to potential adverse Project impacts on your members' established Treaty rights.

Consideration of concerns raised by Indigenous governments and organizations

In making their decision to adopt the Review Board's recommendation, responsible ministers considered comments made by Indigenous governments and organizations (IGOs). Responsible ministers did not hear from the KIA during the environmental assessment but did hear from the KIA on January 30, 2020, after the REA was issued. Responsible ministers appreciated that "KIA generally support[ed] the Measures proposed" by the Review Board in its REA.

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Responsible ministers also understood from the letter that KIA had some outstanding concerns. Notably KIA stated concern with the lack of clarity in the way that the REA treats the potential for involvement of KIA in the mitigation efforts required by the measures, and the lack of inclusion of measures related to Bathurst caribou given the current state of the Bathurst caribou herd. How responsible ministers considered KIA's comments are described below.

Resourcing/Capacity Problem

KIA identified that it was unable to actively participate in the environmental assessment because of resourcing / capacity problems. Responsible ministers acknowledge the resource limitations of IGOs to actively participate in environmental assessments. For this environmental assessment, Crown-Indigenous Relations and Northern Affairs Canada offered financial assistance through its Northern Participant Funding Program to help alleviate these types of challenges. This funding program was available to participants of the Diavik environmental assessment and application material was posted to the Review Board's public registry. Should KIA want to participate in future environmental assessments, it is recommended that they enquire about the Northern Participant Funding Program to help address resourcing challenges. For more information, please visit: www.rcaanc-cirnac.gc.ca/eng/1545150205116/1547478360408

Lack of Clarity in Potential for Involvement of KIA in Mitigation Efforts

Responsible ministers acknowledge that there was a discrepancy in excluding KIA from Measure 2. KIA participated in the original Diavik Diamond Mine assessment (1999), is a party to the *Environmental Agreement*, and has a *Participation Agreement* with Diavik. Because of KIA's early involvement with the mine, Diavik included KIA as one of the primary IGOs that they would engage with per its engagement plan for its water licence amendment. KIA is already included in the various activities at the mine site, through the agreements noted above, and in Diavik's current engagement plan. Hence, it is reasonable to assume that KIA should continue to be involved, which would mean KIA would be included in Measure 2. Responsible ministers also understand that Diavik intends to meaningfully engage with KIA "during all subsequent stages/phases of project development" which includes the components of Measure 2, as per Diavik's February 27, 2020 letter to the GNWT. Responsible ministers believe the commitments Diavik has made in its February 27, 2020 letter should address KIA's outstanding concern regarding involvement in Measure 2. Responsible ministers encourage KIA and Diavik to continue meaningful engagement regarding the Project, its potential impacts, and possible mitigations.

Bathurst Caribou

The responsible ministers' thank you for your comments concerning the Bathurst Caribou herd. The responsible ministers agree with the Review Board's conclusion that "the Bathurst caribou herd is under threat, but the Project is not likely to make this problem worse." As responsible ministers believe water quality concerns have been addressed by measures in the REA, it is unlikely that there will be adverse impacts on caribou from this Project. Based on the analysis above, responsible ministers respectfully believe the duty to consult and accommodate the KIA for the purposes of EA1819-01 has been fulfilled.

Clarification on KIA's involvement for Measure 6

Responsible ministers took considerable time analyzing the GNWT directed Measure 6 primarily because the measure was inconsistent in its inclusion of KIA. The analysis was also to ensure that Measure 6 could be effectively implemented and that any potential significant cumulative adverse cultural impacts of the Project on any potentially affected Indigenous community could be effectively mitigated. While your letter did not discuss Measure 6, because KIA was captured in this measure, we wanted to take a moment to describe how the GNWT interprets the measure and how the GNWT intends to include KIA.

Firstly, under section 130(5) of the *Mackenzie Valley Resource Management Act*, it states that “a first nation, local government, regulatory authority or department or agency of the federal or territorial government affected by a decision made under this section shall act in conformity with the decision to the extent of their respective authorities.” Responsible ministers interpret s. 130(5) to mean that while the measure mentioned programing, the GNWT can only provide programing within the Northwest Territories (NWT).

The GNWT interprets the measure as having three primary components to adaptively manage adverse impacts on cultural well-being from the Project: (1) Indigenous communities will develop cultural well-being indicators with the help of the GNWT; (2) the GNWT will meet with Indigenous communities to engage in discussions and share information; and, (3) the GNWT will provide annual reporting. In order to develop cultural well-being indicators to monitor and evaluate cultural well-being impacts associated with the Project, the GNWT intends to facilitate a workshop with the potentially affected Indigenous communities. The GNWT will invite KIA to participate in this workshop. After establishing a list of indicators, the GNWT will host a meeting with the same Indigenous communities so that an agreed upon list of potential priority cultural well-being impacts can be determined. This meeting may be held in conjunction with the workshop. While individual communities may suggest different cultural well-being indicators, based on the overall comments and concerns during the environmental assessment, the GNWT expects that there will be similarities so that the communities and the GNWT will be able to agree to a common list of potential priority impacts. The GNWT will then be able to monitor and adaptively manage adverse impacts on cultural well-being from the Project within the NWT and report to the Indigenous communities. Annual meetings will also allow participants with identified cultural well-being indicators to discuss how effective GNWT programs within the NWT (or other programs) are at addressing the list of potential priority impacts. Participants will also discuss if there are any possible improvements to GNWT programs within the Northwest Territories and the GNWT will advise if there are new programs within the NWT or other forms of support available.

Responsible ministers respectfully believe that the GNWT's interpretation and implementation plan for Measure 6 will reasonably mitigate any potential significant cumulative adverse cultural impacts from the Project for KIA. Should KIA have any concerns with the general outline for the implementation plan, KIA should contact the Department of Industry, Tourism and Investment (who is leading implementation) to discuss.

Next steps for Diavik's Project

Responsible ministers emphasize that consultation and accommodation with respect to your established Treaty rights do not end with the responsible ministers' decision on the environmental assessment of the Project. The Project will now resume the regulatory process and any other post-environmental assessment processes. These processes will include opportunities for IGOs to offer input on authorizations and management plans and help ensure that potential adverse impacts to Aboriginal and Treaty rights are accommodated, as necessary. The responsible ministers encourage the KIA to participate in the Wek'èezhii Land and Water Board's water licensing process and any other post-environmental assessment processes relating to this Project.

If you have any questions about the decision, please contact Melissa Pink, Manager, Project Assessment Branch, at Melissa_Pink@gov.nt.ca or by telephone at 867-767-9180 ext. 24021.

Sincerely,



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Assistant Deputy Minister
Planning and Coordination
Lands



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