

JUN 04 2020

Chief Darryl Marlowe and Band Council
Łutselk'e Dene First Nation
P.O. BOX 28
ŁUTSELK'E NT X0E 1A0

By Email

Dear Chief Marlowe:

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 Łutselk'e Dene First Nation

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 Łutselk'e Dene First Nation (LKDFN) 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 LKDFN to participate in the Review Board's process.

Responsible ministers also wrote to LKDFN 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 LKDFN if the REA addressed concerns as they relate to potential adverse Project impacts on your members' asserted Aboriginal and Treaty rights.

Consideration of concerns raised by Indigenous governments and organizations

In making the decision to adopt the Review Board's recommendation, responsible ministers considered comments made by Indigenous governments and organizations (IGOs). This included what responsible ministers heard from the LKDFN during the environmental assessment and after the REA was issued.

In your post-REA letter of February 19, 2020, you identified three outstanding concerns and associated requests regarding Diavik's Project.

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These concerns were identified by LKDFN for responsible ministers' consideration to address potential adverse impacts from the Project on LKDFN's asserted Aboriginal and Treaty rights. In summary, the three requests from LKDFN were for an updated water model before a water licence was issued, funding from Crown-Indigenous Relations and Northern Affairs Canada to participate in the water licence phase of this Project, and the development of thresholds for corrective actions as part of the adaptive management of cultural well-being impacts.

Responsible ministers considered your first request that the Wek'èezhì Land and Water Board "require an updated water model from Diavik before a water licence is issued." Specifically, LKDFN noted they feel Measure 1 will not address potential adverse impacts of the Project on LKDFN's asserted Aboriginal and Treaty rights if the modelling is not updated prior to the issuance of a water licence.

Responsible ministers appreciate the concern of potential adverse impacts from the Project; however, they believe the modelling does not need to occur prior to the issuance of a water licence. Measure 1 is written such that it ensures processed kimberlite cannot be deposited into the pit lakes(s) until water quality objectives are established and the modelling meets these objectives. Measure 3 requires the updating of modelling to show whether water in the pits and Lac de Gras will meet the water quality objectives. The pit lake(s) cannot be reconnected, partially or fully, until updated water quality modelling and monitoring that water in the pit lake(s) will meet these objectives. Due to these requirements of Measure 1, and Measure 3c, the responsible ministers believe adverse impacts to the cultural use of Lac de Gras will be prevented. Also, responsible ministers understand that the Wek'èezhì Land and Water Board has a duty through the regulatory process to ensure there is an enforcement mechanism that can certify that processed kimberlite will not be deposited into pit lake(s) until the objectives under Measure 1 have been met and that this will likely be achieved through the issuance of an amended water licence with conditions. The responsible ministers agree that Measures 1 and 3, as worded, will reasonably address the potential adverse impacts described in your first concern.

Your second concern was that LKDFN "does not have the funding to meaningfully participate in the next phase of the process" and so Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) should provide funding for that participation. The responsible ministers appreciate the funding and capacity challenges that IGOs face in trying to meaningfully participate in regulatory processes; however, currently, CIRNAC is not able to offer funding outside of its Northern Participant Funding Program which is specifically for environmental assessment. In the absence of federal funding, LKDFN is eligible for financial support through the GNWT's Interim Resource Management Assistance (IRMA) program. This program offers annual base funding and biannual resource pressures funding, which LKDFN could use to participate in the water licence phase, should LKDFN's application be approved.

While responsible ministers recognize the limitations of IRMA, Measure 1 should adequately prevent significant adverse impacts on the cultural use of Lac de Gras.

As the second water quality objective for Measure 1 will be developed by way of Measure 2, and because Diavik will need to ensure LKDFN can meaningfully participate in developing criteria under Measure 2, the responsible ministers believe that there are satisfactory means to address this second concern.


Your final concern was that in your reading of the REA measures, Measure 6 did "not require the development of thresholds or corrective action" and that this "deficiency of the measure... should be rectified." Responsible ministers interpret Measure 6 broadly and believe the intent of establishing cultural well-being indicators to monitor and evaluate cultural well-being impacts associated with the Project allows for the discussion of thresholds or corrective action. This discussion would occur during the meetings with Indigenous communities that are required under Measure 6. The requirement to monitor and adaptively manage adverse impacts on cultural well-being implies that if impacts are identified, through adaptive management, corrective action should be taken. Community-specific indicators can only be identified by the Indigenous communities. Not all indicators necessarily have thresholds beyond which one would consider the impact significant. As opposed to having a set threshold, the responsible ministers believe that it is more suitable to have open discussions with IGOs regarding how they see the measure being implemented and around significance of changes to cultural well-being. Based on the analysis above, responsible ministers respectfully believe the duty to consult and accommodate the LKDFN for the purposes of EA1819-01 has been fulfilled.

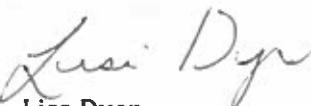
Next steps for Diavik's Project

Responsible ministers emphasize that consultation and accommodation with respect to your asserted Aboriginal and 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 LKDFN to participate in the Wek'èezhìi 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,


Kate Hearn
Assistant Deputy Minister
Planning and Coordination
Lands


Lisa Dyer
Director General
Northern Projects Management Office

- c. Honourable Caroline Cochrane
Premier
- Ms. Shaleen Woodward
Principal Secretary
- Mr. Martin Goldney
Secretary to Cabinet/Deputy Minister
Executive and Indigenous Affairs
- Mr. Mark Hopkins
Director General
Crown Indigenous Relations and Northern Affairs Canada
- Ms. Shawn McCann
A/Deputy Secretary, Indigenous and Intergovernmental Affairs
Executive and Indigenous Affairs
- Ms. Sylvia Haener
Deputy Minister
Lands
- Dr. Erin Kelly, Ph.D.
Deputy Minister
Environment and Natural Resources
- Ms. Pamela Strand
Deputy Minister
Industry, Tourism and Investment
- Mr. David Nanang
Regional Director General
Central and Arctic Region, Fisheries and Oceans Canada
- Ms. Ethel Liske
ADFN Negotiations Coordinator
Akaitcho Dene First Nation
- Ms. JoAnne Deneron
Chairperson
Mackenzie Valley Environmental Impact Review Board
- Mr. Joseph Mackenzie
Chairperson
Wek'èzhì Land and Water Board

Mr. Charlie Catholique
Chairperson
Environmental Monitoring Advisory Board

Mr. Sean Sinclair
Principal Advisor
Environment and Closure Readiness
Diavik Diamond Mines Inc.

Ms. Stephanie Poole
Interim Measures Agreement Coordinator
Akaitcho Pre-Screening Board

Ms. Iris Catholique
Executive Assistant
Łutselk'e Dene First Nation

Ms. Annie Boucher
Executive Director
Akaitcho Territory Government