

JUN 04 2020

President William Enge
North Slave Métis Alliance
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By Email

Dear President Enge:

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 North Slave Métis Alliance

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 North Slave Métis Alliance (NSMA) 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 NSMA to participate in the Review Board's process.

Responsible ministers also wrote to NSMA 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 NSMA if the REA addressed concerns as they relate to potential adverse Project impacts on your members' asserted Aboriginal 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 NSMA during the environmental assessment and after the REA was issued.

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How responsible ministers considered the five comments and recommendations in NSMA's February 7, 2020 letter are described below.

Analysis of Recommendation 1: Environmental monitoring should be done with full involvement and consent of NSMA and other affected Aboriginal groups

The Review Board included five measures in the REA that were designed to ensure there was adequate engagement between Diavik and IGOs. Measure 5, in particular, requires Diavik to conduct additional and more effective engagement with potentially affected Indigenous communities. As mentioned in your letter, Measure 2 "ensure[s] collaboration with Indigenous groups on development of water quality and long-term monitoring of these criteria, built on the backbone of Traditional Knowledge." Responsible ministers believe Measure 2, in combination with Measure 5, begins to accommodate NSMA's first recommendation (involvement of NSMA and other affected Aboriginal groups in environmental monitoring). Responsible ministers also believe that NSMA's recommendation is addressed by the requirement that Diavik update monitoring and management programs during the regulatory proceedings. Specifically, responsible ministers encourage NSMA to participate in the regulatory phase, where Diavik is required to update all relevant monitoring plans and management programs (Measure 1) to ensure water quality objectives (including suitable for cultural use; Measure 2) are met.

Analysis of Recommendation 2: Aboriginal rights include the option for future cultural use of the land and engagement is necessary for this review

In your letter, you said that "NSMA expects further engagement with Diavik to review in detail the cultural and social significance of the Lac de Gras area to members." Measure 2 requires Diavik to develop clear, measurable, and meaningful criteria to determine if water is suitable for cultural use by working directly, in a culturally appropriate manner, with Traditional Knowledge holders and other experts identified by Indigenous intervenors. Measure 5 mitigates significant adverse impacts on the cultural use of Lac de Gras and states that "Diavik will collaborate with each potentially affected Indigenous community individually to develop meaningful engagement protocols that are culturally appropriate to each group". These measures are intended to ensure an open dialogue between Diavik and IGOs. On February 27, 2020, Diavik also reiterated "its commitment to meaningful engagement" with potentially impacted IGOs, which includes NSMA. Responsible ministers believe these measures and the commitment from Diavik satisfy NSMA's request for further engagement with Diavik.

Under your second recommendation, you also said that "NSMA strongly supports Measure 6 as detailed in the REA, with some additions (see Recommendation 3), notably in identifying and developing community-specific cultural well-being indicators with the GNWT." While responsible ministers did not see a linkage between Recommendation 3 ("Aboriginal groups should input on independent review panel recommendations) and Measure 6, there is agreement between responsible ministers and NSMA regarding Measure 6. The GNWT will work with IGOs to develop community-specific cultural well-being indicators. The responsible ministers believe that the measures in the REA adequately address Recommendation 2.

Analysis of Recommendation 3:
Aboriginal groups should input on independent review panel recommendations

Your third recommendation was for Measure 4 to capture the following:

- i. Aboriginal input on panel selection;
- ii. Aboriginal groups to provide input and response to the independent review panel recommendations;
- iii. feedback should be directly between NSMA and the panel;
- iv. NSMA to be directly engaged and compensated for their recommendations, review and knowledge; and
- v. Diavik to fund engagement between the panel and NSMA.

As you also mentioned in your letter, Measure 4 already includes Aboriginal input on panel selection; the Wek'èezhì Land and Water Board "will engage Diavik and intervenors to identify and select panel members with appropriate expertise." Responsible ministers believe item i, above, is addressed.

The responsible ministers acknowledge your request that IGOs be able to provide responses directly to the panel and be compensated for their recommendations, review and knowledge. As per the language of Measure 4, the Wek'èezhì Land and Water Board will engage Diavik and intervenors to identify and select panel members with appropriate expertise. NSMA has the opportunity to increase its participation in the panel by suggesting qualified people that represent the viewpoints of NSMA's members to sit on the panel. The public review component of the Wek'èezhì Land and Water Board process provides NSMA with an adequate avenue to voice concerns with any panel recommendations. NSMA can also provide comments on the terms of reference that will be developed by Diavik prior to the Wek'èezhì Land and Water Board's approval process. Finally, NSMA can suggest, through the regulatory review process, that the terms of reference for the panel include an engagement component with IGOs in addition to the public regulatory process.

Responsible ministers believe that it is reasonable for Diavik to fund the independent review panel as required by Measure 4. As for funding engagement between the panel and NSMA, NSMA is eligible for yearly resource pressures funding from the GNWT's Interim Resource Management Assistance (IRMA) program. This could be used to assist NSMA's participation in public review of materials for the water licence amendment process, should NSMA's application for IRMA funding be approved. The responsible ministers believe the current regulatory framework, along with Measure 4, allows IGOs, including NSMA, to adequately express their potential concerns.

Analysis of Recommendation 4:
Water quality modeling updating should include post-reconnection to Lac de Gras

Your fourth recommendation was for there to be an additional water quality model update "after reconnection of the pit lake(s) containing processed kimberlite to Lac de Gras." While the responsible ministers acknowledge NSMA's rights "to clean water, a safe environment, and

continued cultural use of the Lac de Gras area,” Measures 3 and 4 combined with existing water licence conditions, other relevant monitoring plans and management programs are reasonably protective of the environment and should mitigate NSMA’s concerns.

Analysis of Recommendation 5: GNWT and Canada should ensure additional socio-economic opportunities for affected Aboriginal groups as economic reconciliation

The final recommendation in your letter said that NSMA expects its members to be at the forefront of four activities:

- i. “shaping the water quality criteria;
- ii. developing and implementing long-term monitoring of the pit lake(s), including water quality, fish health and movements, wildlife monitoring around the pits, and water quality monitoring in Lac de Gras at the outflow from the dike(s);
- iii. identifying experienced panel members for an independent review panel of the updated water quality modelling; and,
- iv. transportation of materials off-site (for e.g., NSMA has subsidiary companies for trucking and transportation).”

The responsible ministers believe that the REA addresses the listed concerns of NSMA where the concern is within the scope of the Review Board’s assessment. Shaping water quality criteria is achieved through Measures 1 and 2 which ensure Indigenous intervenors, including NSMA, are involved in developing water quality objectives for pit lake(s) at closure and post-closure. Responsible ministers also believe that the second activity noted above (long-term monitoring) is addressed through Measure 2 (Diavik is required to support involvement of communities to develop and implement long-term monitoring, informed by Traditional Knowledge), Measure 5 (additional and more effective engagement, including monitoring plans) and the monitoring plans and management programs associated with Diavik’s water licence.

Measure 4 requires Diavik to establish and fund a review panel for water quality modeling, and the Wek’èezhìi Land and Water Board is required to engage Diavik and intervenors to identify and select panel members. Responsible ministers believe the third activity NSMA has noted above is achieved through the above objectives of Measure 4.

The final recommendation noted in the letter is the expectation from NSMA that its members be at the forefront of the transportation of material off-site. Responsible ministers note the request of NSMA. Responsible ministers also note that the Project assessed and recommended for approval by the Review Board does not consist of transporting materials off-site. Responsible ministers suggest that NSMA talk directly to Diavik regarding material transportation. Diavik’s February 27, 2020 letter to the GNWT suggests that speaking directly with Diavik about your socio-economic concerns is the correct avenue as their letter said that they are “committed to continued involvement of Indigenous groups in employment and contracting opportunities for the existing Diavik Mine operations in general and the [Processed Kimberlite to Mine Workings] Project specifically.”

After consideration and analysis of your recommendations, the responsible ministers believe the recommendations NSMA have set out in the letter have been meaningfully and reasonably addressed through the current measures and/or can be meaningfully and reasonably addressed through the regulatory process. Based on the analysis above, responsible ministers respectfully believe the duty to consult and accommodate the NSMA 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 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 NSMA to participate in the Wek'èezhì 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 Ms. 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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