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VIA EMAIL

RE: Snap Lake Water License – YKDFN Closing Comments

1.0 Introduction

YKDFN has prepared the following closing statements to summarize our position regarding DeBeers' Snap Lake Project water license amendment application, focusing on increased TDS (chloride) effluent levels.

YKDFN holds firmly that there is significant cause for public concern regarding the Project's license application for two reasons:

- First, YKDFN notes Project's poor track record concerning environmental stewardship. By incorrectly predicting and then failing to adaptively manage effluent levels the project is now exceeding the licensed level of contamination allowed to be deposited within Snap Lake.
- Second, given the Dene use and perception of the land in combination with the credibility of this project, there is significant public concern that the Project's approach to setting EQC increases is not protective of the environment. These comments will repeat YKDFN's concerns from earlier in the review objecting to a "pollute-up-to" approach where, instead of taking action before the point of discharge, the tactic is to move (ie. further increase) the "goal posts" once effluent has already reached the receiving environment.

Repeatedly, the YKDFN has taken issue with the DeBeers' consistent too little, too late approach to management; it was repeated during this hearing. As in the original EA hearing, the company failed to engage early and collaborate with the parties to develop consensus and address concerns. It appears the Project accepts no responsibility for their previous errors in modeling which is fundamental to the events leading to this review. The Project failed to do as the license required, failed to adequately monitor discharge or adaptively manage the higher than predicted concentrations of effluent. In front of this board, they stated it was not known the Project faced an imminent TDS issue. YKDFN has shown this to be an obvious falsehood – both in correspondence with Parties and with the project itself acknowledging in public documents that TDS was a major risk to Snap Lake.

YKDFN has learned from the past and is seeking to ensure that we do not repeat history. The Board must put in place clear limits and direction for this company – it's the only way to ensure

mitigation will occur in a manner that we all expect from industry in the territory. These limits should have conservation and environmental resilience as a focus, to ensure that the Dene way of life can continue.

2.0 Uncertainty, Conservation and Room for Error

The critical issue is one of policy – is our northern approach, as evidenced in the foundational documents of our regulatory and governance structures – one by which we must justify conservation, or rather one that we must justify the deposition of waste? YKDFN believes that the right to pollute takes a backseat to environmental stewardship. To overrule that priority, strict expectations and regulations must be in place, particularly in this case, where the initial limits set for Snap Lake have already been compromised. This view is in accordance with the traditional values of Dene people. Dene laws emphasize a minimalist approach which forward and outward looking. This is contrary to DeBeers' approach which leading up to this EA has been inward and narrow, and we think, poses a risk to the receiving environment.

The Project's request for a 680 mg/L TDS limit leaves no room for uncertainty. It requires a complete understanding of the assimilative capacity of the receiving environment to ensure compliance. If recent history with this project has taught us anything, it is that we should be wary of predictions and not rely on mitigation plans that can prove ineffective. We must bring conservatism into the equation. Not having room for error means that there will be immediate consequences associated with poor management or even slightly incorrect predictions. This proposal plans to utilize all of the resilience within the aquatic environment, polluting right up to the level at which the reproductive ability of organisms will be compromised. This is the central theme in our submission; a push for a proposal that allows for continued mine operation and yet preserves environmental resilience.

3.0 What We Know and What We Heard

3.1 Utility of Predictions

We employ conservatism and safety factors in our environmental stewardship approach because the environment is a very complex system in which we cannot predict everything. In the original EA, the project had worked this site for years, drilling hundreds of holes to understand the underground environment. In the end, despite their assurances, it's quite clear that they had little idea what issues they would be facing – that they couldn't envision a scenario such as we are facing today. YKDFN cannot confidently put full faith in the Company's predictions this time around, conservative limits is the only reasonable way forward.

Science, by definition, considers a question along a single thread. In this case De Beers has used Golder to complete a number of toxicity tests with different organisms in the lab. YKDFN have reviewed these works and accept that they are useful discussion point for this process. However, unlike the company's approach – where they want to use this level as limit to guide the release of contaminants of concern – this is a limit that informs our decision to set an objective limit to protect the environment.

Setting aside the fact that these tests have not been reproduced outside of the company's efforts – a critical component of the scientific process, and one which Golder showed was an issue in the background work provided towards setting the strontium EQC - the evidence provided by GNWT experts show that the company failed to follow the CCME guidance to establish these types of SSWQO. YKDFN believe that these requirements are important safeguards to ensure that shortcuts are not taken.

The project failed to undertake any work to evaluate potential interactions with other elements and contaminants that may be in the environment. The project has argued that hardness effects the toxicity of contaminants, thus it seems that there is interaction between TDS (and its components) and other parts of the aquatic environment. Recent concerns over the levels of Thulium and Cesium in the flesh of sampled fish could be an example of this. This concern is analogous to the effects that the presence and absence of certain elements/compounds have on the toxicity of Arsenic in the local Yellowknife area

Ultimately the failure to follow the guidance from the Canadian Council of Ministers for the Environment may not, in and of itself, be a concern to compromise the value of the information submitted, but when viewed in connection with predictions that have historically been incorrect and a management approach that amounts to twiddling thumbs, these values cannot be accepted with blind trust. Ultimately, this work forms the crux of the proponent's submission – there is little information in terms of the mitigations to be used, their efficacy or the project level of commitment to employ them

3.2 Failure to Enact Measures

This Project has failed to react to the situations that they have encountered on the ground and, by submitting a their TDS proposal, have failed to respect the importance of conservation within their proposal.

YKDFN asked DeBeers why they chose to prepare a study that considered TDS treatment options in 2008, but chose not to enact any mitigation or adaptive management planning until 2011. The company stated that they did not know that there was a TDS issue until the recent MVLWB water licensing process.

The GNWT raised concerns with the proponent in 2010 (based on 2009 data) and SLEMA raised the issue in 2009 in a response to the 2007 water license annual report. De Beers either knew they had a problem and did nothing or the failed to adequately monitor one of the primary contaminants of concern from the original EA

3.3 Mitigations

"I want to stress that De Beers has been proactively addressing these parameters. We are not waiting until we see effects in the lake or until generic water quality guideline is exceeded in order to do something. We will have studies completed in advance of when our modelling says the generic water quality guidelines or water licence limits may be exceeded"

Dave Putnam, De Beers, 2011 Water License Hearing

According to the Company, in 2011 they were proactively addressing the issues facing the mine. However, in front of your Board, questions regarding current proactive practices to reduce TDS loadings to the environment were posed: *“our current practice to reduce TDS loadings to the environment is through dilution”* (p. 115). This is the same practice that was employed since day one and has been known to be ineffective for years, and cannot be considered adequately proactive. In this way, DeBeers’ proposed TDS limit is simply moving the goalposts and will result in depositing an unacceptable amount of waste into Snap Lake.

Thus, the current proposed mitigations must also be viewed with suspicion and a great deal of doubt. During the original EA, the project stated that grouting would be used should any TDS concern be identified. The start of grouting efforts are unclear, but since the Technical Session, the Project has indicated that grouting is not feasible.

We cannot simply trust that the project’s proposed mitigation in this case will work either. Though we have their assurances, there’s very little information on how the proponent intends to enact treatment or just what they are willing to undertake. For them, there’s a very large open question as to what is feasible, because they’ve provided little detail on how they will achieve the target. Lacking better information, when combined with the history of this company, there seems to be little reason to trust that this company can or will be able to employ any mitigation unless they are expressly detailed to do so.

3.4 A new Model of Stewardship is needed

YKDFN are troubled with the approach from the company – given their history of stewardship failure, more of the same isn’t acceptable. A simple example is found in the project’s approach to preventing the disturbance of the Lady of the Falls. Given the history of this project, we expect their predictions to be invalid and that the effluent plume will be detectable far beyond their expectations. YKDFN wants to see action if predictions turn out to be wrong rather than to simply move the goalposts and move the monitoring point further downstream.

The project just doesn’t see a connection on how a mining project could have an impact downstream, particularly of note is potential adverse impacts to Lady of the Falls – a significant and still frequented area of the Dene traditional territory. YKDFN hopes future mitigative action, if indeed necessary will result in action that safeguards the integrity of an important area. YKDFN needs to see action plans that go beyond delaying detectable impacts and a willingness to show leadership by giving real consideration to even remote outcomes to demonstrate good faith.

We have seen no indication from the company that their approach to management will change in the future, thus we should be sure that, should they receive an easing of their license, there will be no management actions until they are in danger of additional non-compliances with their license.

4.0 Engagement

4.1 Historical and Current Use

The Snap Lake area is in active use by the YKDFN membership. Our members hunt, trap and

live in the area, both at their own cabins but also with several Band constructed cabins on Mackay Lake. From there, harvesters travel throughout the surrounding areas.

In the past, the contamination of water has been done in a manner that was hidden, that was not discernible by the average person. In this case, existing suspicions surrounding the health and safety of resources impacted by industry will be amplified by their own senses as the water at Snap Lake will taste different under this new limit – it will undergo a discernable change.

The Mackay Lake area, that Snap Lake flows into, represents an important part of the active land base for the YKDFN. It is essential that the area is not degraded – harvesters must have the confidence that the area is safe to ensure that they can live and prosper on the land, as they have for generations. For generations, the Yellowknives Dene have returned to this area to harvest caribou and the region cannot be compromised.

4.2 Nature of Consultation

YKDFN recognize that the Board does not want to be the arbitrator of these matters, but hope that the failures of the project can be recognized while the Board and the Crown work out just what venue that our Constitutional Rights should be reviewed. To have the latter state that all concerns must be brought forward in the regulatory processes, while the Boards say that they do not want to hear these matters is not respectful. Constitutionally protected rights are not a ball to be batted back and forth, all the while being ignored. Furthermore, YKDFN cannot separate concerns about flow of information, as it's highly relevant and symptomatic of past inaction.

Ultimately, the facts are quite plain. The project did not undertake meaningful consultations until just before this hearing – despite past YKDFN concerns and consequential promises to provide meaningful engagements. For the engagement that did take place the Company's effort is suspect. Consider the question posed by De Beers to YKDFN during the EA hearing:

MS. ERICA BONHOMME: Erica Bonhomme, De Beers. Thank you very much, Mr. Slack, for a very heartfelt presentation. We've heard similar comments from -- concerns raised during our recent community visits.

My -- my question is: Has the -- have the Yellowknives Dene made available to us, or -- or to the parties here, to yourselves, the Board, any information that would help us clearly understand the -- the traditional land use in this area, specifically around Snap Lake? And -- and the reason I -- I bring that up is we have met with the communities. We have met with the Chiefs, and we didn't hear those concerns.

From this question, it seems that the Company has heard these concerns from community engagements, yet the lack of physical evidence provided is not enough for them. So when the project states that they "Have heard similar comments – concerns raised during [De Beers] recent community visits" (Erika Bonhomme, June 6th EA Hearing) but then proceeds to ask for evidence of those concerns, it causes one to wonder just what would be required for the company to actually hear a concern.

5.0 Recommendations

In our technical report, YKDFN has recommended a number of Measures be applied. If these are applied, we believe that these should be considered as a suite to ensure that the balance between impacts and benefits will be at a level where significant environmental impacts or public concern will not occur. Together, they will allow the YKDFN way of life to continue, ensuring that the land and water will continue to look after the people so that they may prosper in a healthy and sustainable manner in the coming generations.

In particular, we note that YKDFN believes that explicit limits should be placed on this company. They had numerous opportunities to display leadership and address the challenges that they faced, but they have chosen not to act. With this choice, YKDFN believe that they have forfeited the opportunity to have wider flexibility – and the original nature of concerns of the Review Board should be reflected in the Board decision with hard written limit and a series of recommendations that link management, monitoring and adaptive management. Perhaps a second decision that contains these requirements will encourage the company's full compliance.

This explicit limit should be set to 500 mg/L, which is a protective of the Dene way of life and introduces a small measure of conservation relative to the ability of Snap Lake to absorb effluent released by the mine. It will allow land users to continue to use the land and water in this area, both during and after operations, but with a distinct focus on the downstream during operations and on the immediate area following the cessation of the project's active mining phase.

6.0 Closing

If the onus is on the developer to show how their project will not have significant impacts or cause significant concern, we believe that they have failed. They have submitted a proposal that contains no safety margin, no description of how they will implement future mitigations, and does nothing to show parties how they will change their operations to become more accountable or responsible.

That this has been a mine site beset with challenges is widely accepted. Mitigations in response to these challenges were uniformly the same and limited in success: paste backfill, North Pile management, and TDS. Should the Board make amendments to their original decision, they must be aware that the project will take any leeway they are provided with to continue their history of inadequate action.

YKDFN has noticed a pattern with Snap Lake mine, where these types of urgent scenarios requiring immediate attention consume focus from our Lands and Environment staff. YKDFN is willing to work with the proponent to tackle unexpected circumstances at site in the interest of environmental protection. However, improvements must be made to make management at Snap Lake more proactive.

Chief Edward Sangris to MVLWB regarding De Beers, Sept. 6th 2013

At the beginning of this letter, we noted the many failures of this project – it has been frustrating to watch this lack of stewardship on our land. This type of management is equitable to the ostrich

burying its head in the sand. It should not be rewarded with relaxed license limits and continued trust. The project had flexibility to respond for years and used that flexibility to allow manageable issues to grow into situations that lead to Reviews with short timelines and piecemeal reviews. YKDFN firmly believe that this would not have happened at the other mine sites in our territory where we have seen a history of transparent active management. We hope this decision can compel improved action at Snap Lake.

Sincerely,



Shannon Gault
Director, Land & Environment

- c. Chief Edward Sangris, YKDFN
Chief Ernest Betsina, YKDFN
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