



November 8, 2012

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Mackenzie Valley Environmental Impact Review Board
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Dear Mr. Hubert:

Technical Report Responses – Yellowknives Dene First Nation

De Beers is pleased to provide the Mackenzie Valley Environmental Review Board with Responses to the Technical Submission from the Yellowknives Dene First Nation dated October 22, 2012.

Should you have any questions regarding this submission, please contact our office.

Regards,

Veronica Chisholm
Permitting Manager

Attachment

c: Todd Slack, Research & Regulatory Specialist, Yellowknives Dene First Nation





DE BEERS

CANADA

GAHCHO KUÉ PROJECT

**Yellowknives Dene First Nation
Technical Report Responses**

November

2012

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1 INTRODUCTION

On October 22, 2012 Yellowknives Dene First Nation (YKDFN) submitted their technical report to the Mackenzie Valley Environmental Impact Review Board (MVEIRB) for the De Beers Canada Inc. (De Beers) proposed Gahcho Kué Project (Project). This report provides responses to those recommendations outlined in the YKDFN technical report (YKDFN 2012).

2 YELLOWKNIVES DENE FIRST NATION RECOMMENDATIONS AND RESPONSES

2.1 ADDRESSING REGULATORY GAPS AND COMMUNITY LIMITATIONS

2.1.1 Recommendation 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.

2.1.2 Response

De Beers is currently in discussion with Aboriginal groups, including the YKDFN, on the development of a mutually agreeable mechanism to ensure that Aboriginal groups have access to the resources required to participate in the development and review of monitoring and management plans for the Gahcho Kué Project (Project).

In areas with perceived regulatory gaps such as wildlife and air, De Beers has made clear commitments and provided detailed actions as demonstrated through the early development and submission to the public registry of the Wildlife Effects Monitoring Program, Wildlife and Wildlife Habitat Protection Plan, Air Quality and Emissions Monitoring and Management Plan, and Incinerator Management Plan (De Beers 2012a,b,c).

2.2 ENVIRONMENTAL AGREEMENT WITH BINDING WILDLIFE MONITORING MEASURES

2.2.1 Recommendation 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.

2.2.2 Response

In collaboration with Aboriginal groups, including the YKDFN, and federal and territorial governments, the Wildlife Effects Monitoring Program (WEMP) was submitted to the public registry on October 4, 2012 (De Beers 2012a). In addition, De Beers is in discussion with the Government of the Northwest Territories (GNWT) on the development of a memorandum of understanding to further address the implementation, technical review and adaptive management of the WEMP. De Beers is also currently in discussion with Aboriginal groups, including the YKDFN, on the development of a mutually agreeable mechanism to ensure that Aboriginal groups have access to the resources required to participate in the development and review of monitoring and management plans for the Project.

2.2.3 Recommendation 3

YKDFN believe that this (and YKDFN Recommendation #1) can best be 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.

2.2.4 Response

De Beers is currently in discussion with Aboriginal groups, including the YKDFN, on the development of a mutually agreeable mechanism to ensure that Aboriginal groups have access to the resources required to participate in the development and review of monitoring and management plans for the Project.

De Beers has made clear commitments and provided detailed actions as demonstrated through the early development and submission to the public registry of the Wildlife Effects Monitoring Program, Wildlife and Wildlife Habitat Protection Plan, Air Quality and Emissions Monitoring and Management Plan, and Incinerator Management Plan (De Beers 2012a,b,c). In addition, De Beers is in discussion with GNWT on a memorandum of understanding to further address the implementation, technical review and adaptive management of these plans.

2.3 CUMULATIVE IMPACTS

2.3.1 Recommendation 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.

2.3.2 Response

De Beers has made the commitment to working collaboratively with government to provide information relevant to wildlife management and cumulative impacts and is in the process of developing a memorandum of understanding with the GNWT clarifying roles and responsibilities. It is also important to acknowledge the existence of herd-level programs currently in place such as the *Barren-ground Caribou Management Strategy (2011 to 2015)*, and the *Management Plan for the Bathurst Caribou herd (2004)*. The creation of a trans-boundary effects monitoring program spanning the range of the Bathurst Caribou herd is beyond the responsibility of a single company, however De Beers will undertake

Project-related effects monitoring and will provide the data to the responsible authority (GNWT) to analyse and manage cumulative effects.

2.3.3 Recommendation 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 be in place within 5 years of the report of environmental assessment decision.

2.3.4 Response

De Beers has made commitments to support conservation efforts within an existing Adaptive Management Framework (De Beers 2012h; Round 2 Information Request Response to GNWT 2-1 [De Beers 2012d]).

The process requested by the YKDFN already exists in the form of “*A Barren-ground Caribou Management Strategy (2011 to 2015)*”, published by the GNWT. This Strategy guides barren-ground caribou monitoring and management, and provides the details for required monitoring, and triggers for harvest management and/or further studies.

The document also describes the process of engagement with other co-management partners (such as the Wek'èezhii Renewable Resources Board, the Government of Nunavut and the YKDFN). The Strategy is in its second five-year cycle, and is making progress on developing the information required to make good management decisions.

2.4 CARIBOU: IMPACTS

2.4.1 Recommendation 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.

2.4.2 Response

The Wildlife Effects Monitoring Program already provides for a detailed analysis of Project-related effects to wildlife on a 3 to 5 year cycle. The data and results can be used by the GNWT to analyze and manage cumulative effects, and by other proponents for increasing the confidence in future environmental assessments. Additional mitigation for Project-related effects can be suggested by the Project's Adaptive Management Response Framework (De Beers 2012h; also refer to response to Tłıchǫ Government Recommendation #15 [De Beers 2012e]).

2.5 CARIBOU: MONITORING THE PROJECT'S WINTER ACCESS ROAD

2.5.1 Recommendation 7

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.

2.5.2 Response

De Beers will consider this recommendation within the Adaptive Management Response Framework if caribou are present in suitable densities to allow for an informed assessment. The options for monitoring of the Project Winter Access Road have been presented in the WEMP submitted to the public registry on October 4, 2012 (De Beers 2012a; also refer to responses to LKDFN Recommendation #3 [De Beers 2012f] and to Tłıchǫ Government Recommendation #12 [De Beers 2012e]).

2.6 CARIBOU: DETERMINATION OF ZONE OF INFLUENCE AND MANAGING MINING OPERATIONS

2.6.1 Recommendation 8

As part of the WEMP, YKDFN ask that De Beers be required to evaluate the ZOI by means of testing their impact predictions, and develop studies that can examine potential causal mechanisms for the ZOI, which can lead to further mitigation of impacts of the project on caribou.

2.6.2 Response

De Beers has committed to monitoring of the zone of influence (ZOI) in the WEMP submitted to the public registry on October 4, 2012 (De Beers 2012a; also refer to response to GNWT Recommendation #3 [De Beers 2012g] and Tłıchǵ Government Recommendation #13 [De Beers 2012e]).

The study is designed to examine changes in distribution (occurrence) of caribou around the mine. Monitoring the dust deposition on soils and vegetation will be used to determine potential causal relationships of changes in caribou distribution and behaviour.

2.7 GRIZZLY BEAR AND WOLVERINE: STUDY DESIGN

2.7.1 Recommendation 9

As part of the WEMP, YKDFN suggests that De Beers sample the area south of the proposed grizzly bear grid to provide better coverage of areas potentially affected by mine-related activities. Similarly, YKDFN suggests that De Beers conduct full wolverine sampling within the 12- 14 km area centred on the mine site.

2.7.2 Response

The grizzly bear and wolverine study designs as proposed are robust and capable of meeting the monitoring objectives. De Beers has committed to participate in additional meetings with the GNWT to discuss the study design and logistics for the grizzly bear and wolverine programs prior to their implementation in 2013.

2.8 INCINERATOR MANAGEMENT PLAN- PERSISTENT ORGANIC POLLUTANTS

2.8.1 Recommendation 10

As part of the Environmental Agreement, YKDFN recommend that the Board make a measure that requires:

- a) Conformance to the CCME guidelines
- b) Implement a monitoring regime that includes testing to confirm that the company is meeting the guidelines. This monitoring regime should include regular testing as directed by Environment Canada.
- c) Develop a local baseline for persistent pollutants

This will allow the parties to have a regulatory mechanism to utilize to ensure good corporate behaviour with regards to this issue. Without this measure, the company is free to pollute in any manner they wish.

2.8.2 Response

- a) De Beers has submitted an Incinerator Management Plan and Air Quality and Emissions Monitoring and Management Plan (AQEMMP) to the public registry (De Beers 2012b,c). De Beers has committed to meet the CCME guidelines for air quality emissions as stated in the plans.
- b) De Beers has submitted a detailed AQEMMP that includes stack testing (De Beers 2012b). The plan was developed in consultation with Environment Canada and GNWT.
- c) De Beers is employing the best available technology for incineration and is committed to best management practices detailed in the Incinerator Management Plan. Incinerator emissions are not a substantial air quality issue for the Project and additional monitoring, aside from intermittent stack testing, is not required.

2.9 CLOSURE PLAN

2.9.1 Recommendation 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.

2.9.2 Response

De Beers has submitted an Environmental Impact Statement (De Beers 2010) with a detailed assessment and modeling of effects during the closure phase as per the Terms of Reference (ToR; Gahcho Kué Panel 2007) based on the closure concept for the Project. As per the Aboriginal Affairs and Northern Development Canada (AANDC) and Mackenzie Valley Land and Water Board (MVLWB) permitting requirements, De Beers will prepare a Preliminary Closure and Reclamation Plan for review and approval during the permitting phase. An interim plan will then be advanced during the construction and operations phases according to a schedule set by the MVLWB.

2.10 ONGOING INCORPORATION OF TRADITIONAL KNOWLEDGE

2.10.1 Recommendation 12

To ensure that this does not become an idle commitment, YKDFN ask the board 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.

2.10.2 Response

De Beers has committed to incorporating Traditional Knowledge into the monitoring programs over the life of the Project. De Beers develops annual engagement plans in an effort to meet its commitments.

Since the technical sessions in May 2012, De Beers has continued to honor its commitment to provide opportunities for communities to provide Traditional Knowledge into the Project. The company provided a series of six summer site-based workshops in August and September, and provided additional fall workshops in Yellowknife as follow up to ongoing engagement with communities at the summer site workshops. The focus on the fall workshops was on the development of wildlife monitoring and the fish habitat compensation options. In all of the summer site workshops and for the fall workshops, De Beers has provided opportunities, and funding for Aboriginal groups to include Traditional Knowledge holders who could provide expertise and Traditional Knowledge to the Company.

De Beers remains committed to providing opportunities over the life of the Project for the incorporation of Traditional Knowledge through site visits and workshops, through ongoing community engagement, in monitoring programs, developed with the input of communities, and through Traditional Knowledge Studies undertaken by communities with the support of De Beers.

De Beers has funded six Traditional Knowledge Studies for the Project: Lutsel k'e Dene First Nation, Yellowknives Dene First Nation, Deninu Kue First Nation, Tłı̨chǫ Government, North Slave Metis Alliance and the NWT Metis Nation. The Tłı̨chǫ Government study has been completed and submitted to the public registry. De Beers has requested that the remaining five groups submit an interim report or update on their Traditional Knowledge Studies to the public registry prior to its closure.

De Beers' commitment is to provide ongoing opportunities for Traditional Knowledge Holders to provide feedback on monitoring programs, to provide input into the Project and to work with the Company over the life of the Project to improve how Traditional Knowledge is incorporated. De Beers believes that participation in these programs will be the key to the successful incorporation of Traditional Knowledge.

2.11 SOCIO-ECONOMIC CONCERNS

2.11.1 Recommendation 13

YKDFN ask the board to require the commissioning of an independent economic analysis that evaluates a series of likely scenarios to determine what options would provide maximum benefits for the residents of the Mackenzie Valley. If this analysis is in agreement with De Beers perspective, then permitting could begin, however if it is in conflict, then additional mitigations must be considered.

2.11.2 Response

Impact Economics is undertaking an economic analysis and labour force study that will evaluate a series of mine initiation scenarios, which will be submitted as a separate technical memorandum. The analysis reported in the 2010 EIS indicates that the timing of the construction of this Project would not result in barriers to employment for Northwest Territories (NWT) residents (De Beers 2010). The 2010 EIS indicated that one of the key barriers to employment for the Aboriginal labour force is education. De Beers is collaborating with the Government of the Northwest Territories (GNWT) and Aboriginal communities on education and training initiatives (refer to the response to Tłı̨chǫ Government Recommendation #6 [De Beers 2012e]).

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4 ACRONYMS AND ABBREVIATIONS

AANDC	Aboriginal Affairs and Northern Development Canada
AQEMMP	Air Quality and Emissions Monitoring and Management Plan
CCME	Canadian Council of Ministers of the Environment
De Beers	De Beers Canada Inc.
GNWT	Government of the Northwest Territories
KLOI	Key Line of Inquiry
MVEIRB	Mackenzie Valley Environmental Impact Review Board
MVLWB	Mackenzie Valley Land and Water Board
Project	Gahcho Kué Project
ToR	Terms of Reference
WEMP	Wildlife Effects Monitoring Program
YKDFN	Yellowknives Dene First Nation
ZOI	zone of influence