



DENINU KUE FIRST NATION
P.O. BOX 1899
FORT RESOLUTION, NT
X0E 0M0
(867) 394-4335 FAX (867) 394-5122
ADMIN_DKFN@NORTHWESTEL.NET

February 7, 2020

Katie Rozestraten
Project Assessment Analyst
Government of the Northwest Territories
Email: Katie_Rozestraten@gov.nt.ca

Re: Report of Environmental Assessment for Diavik Diamond Mines Inc.'s Kimberlite Deposit Proposal [EA1819-01]

Dear Ms. Rozestraten,

The Deninu Kue First Nation (DKFN) is pleased to provide the following comments regarding the Report of Environmental Assessment prepared by the Mackenzie Valley Review Board (MVRB) for project EA1819-01 Diavik Diamond Mines Inc. – Depositing Processed Kimberlite into Mine Workings (PKMW project). The Diavik Diamond Project is within the current and traditional socio-economic use areas of the DKFN and the lands around the project have been used by our people since time immemorial for hunting, fishing, trapping and gathering. The DKFN has been supportive of the Diavik Diamond Mine and other projects in our traditional territory as we recognize the potential benefits to our community and the Northwest Territories, but we continue to be optimistic that our rights, treaty, traditions and way of life continue to be paramount in any recommendations, accommodations and final decisions of the PKMW project.

The DKFN has participated in the review process of the PKMW project and has conducted the following activities:

- Review of the Summary Impact Statement and responses to information requests prepared by Diavik Diamond Mines Inc.;
- submission of our Intervention (technical report);
- presentation at the technical public hearings;
- review of other party interventions; and
- Submission of closing arguments.

We remain concerned about several aspects of the PKMW project and the Reasons for Decision and Measures put forth by the MVRB, especially as these pertain to residual and cumulative effects on ecosystems within our traditional territory that will ultimately affect our ability to

practice our asserted Aboriginal and Treaty rights. Our comments to you focus on water quality, fish and aquatic resources, the Bathurst caribou herd and future consultation and engagement.

Water Quality

Based on what it heard during the environmental assessment review process, the MVRB is “unconvinced by Diavik’s assessment of water quality impacts because Diavik’s preliminary modelling leaves too much uncertainty” (REA page 64). Because of this uncertainty, the MVRB concluded that the project would have a significant adverse effect on the cultural use of the area. The MVRB stated:

- Diavik did not properly assess the potential for impacts on cultural use; and
- Diavik did not develop culturally relevant water quality standards for Lac de Gras.

Because of these shortcomings, Indigenous intervenors doubt that the area would continue to be good for cultural use after closure if the project proceeds. Likewise, the MVRB found that the project will add cumulatively to significant cultural impacts already affecting the area.

The MVRB concluded that Diavik did not do enough to demonstrate that adverse impacts to water quality will not occur, plus the MVRB agreed with intervenors that more certainty from further monitoring is necessary. However, in Measure 1 (REA page 82), the MVRB directs Diavik to meet water quality objectives at closure and follows this up with Measure 3 (REA page 85), which states that Diavik will update water quality modelling predictions at three time periods: 1) before depositing processed kimberlite into the pits; 2) before filling the pits with water from Lac de Gras; and 3) before connecting the pits to Lac de Gras.

These measures are portrayed in a way that will allow the Wek’èezhì Land and Water Board (WLWB) to amend Diavik’s water licence (W2015L2-0001) before addressing any of the uncertainty that was raised so frequently by intervenors in the environmental assessment of the PKMW project. Should the WLWB conduct a public hearing of the water licence amendment, intervenors will have to devote resources to the water licence amendment process, where there will continue to be unresolved issues regarding the uncertainty of potential impacts. It is worth noting here that unlike the MVRB review process, intervenor funding is not available from the WLWB to support a fair and effective process. It is in this regard that the DKFN does not support the Measures put forth by the MVRB and recommends certainty in the water quality modelling predictions be achieved during the water licence amendment process, in addition to the three time periods outlined above.

Fish and Fish Habitat

The breaching of the dikes around the pits has the potential to disturb the stratification of the pit lakes. There is the potential for localized significant effects from the potential contaminant migration upwards in the water column, which could expose fish, plankton and benthic invertebrates in the immediate vicinity to potentially harmful levels. This concern has not been addressed, especially in consideration of the concerns raised over the accuracy of the water quality model and questions around the consolidation of extra-fine processed kimberlite.

Also, in its habitat compensation plan, as captured under Diavik's current *Fisheries Act* authorization, Diavik would keep sections of the dikes in place and these structures, both within the pit lake and on the Lac de Gras side, would be reclaimed as fish habitat. Given the lack of information presented by Diavik the question remains as to whether water quality in the pit lakes will not pose harm to fish species. Should this be realized then the planned fish habitat measures will not be usable and additional offsetting measures will need to be identified.

While these actions should be addressed within the Diavik Diamond Mine Aquatic Effects Monitoring Plan, the MVRB did not include specific measures in the REA to ensure this happens as a result of the PKMW project, despite presenting this argument in Section 3.2.1 of the REA. The DKFN recommends an additional Measure be added in this regard to ensure a mechanism is in place to track the follow-up of this issue.

Bathurst Caribou Herd

The MVRB asserts that the project is unlikely to cause adverse impacts on caribou and is therefore unlikely to contribute to cumulative significant adverse impacts on caribou. It made this assertion under the pretense that if no potential impacts to water result from the project, then adverse impacts on caribou are unlikely to occur, which was the same determination that Diavik made in its summary impact statement. There are two flaws with this reasoning. First, as mentioned above the level of uncertainty, in regard to potential impact to water quality, remains.

Second, in making the prediction of environmental effects on wildlife and wildlife habitat, Diavik used the same significance criteria that was used in the original Diavik Diamond Project environmental assessment in 1998. Since the original environmental assessment for the Diavik Diamond Project, additional guidance has become available for assessing environmental effects to species at risk, where the assessment of residual effects should consider whether such effects may intensify or aggravate known threats to wildlife species. Further, given the diminished and precarious state of the Bathurst caribou herd, determining whether residual effects are significant can be guided by an examination of whether project activities would exceed thresholds. The use of assessment evaluation criteria from over 20 years ago, when caribou

were facing different pressures does not demonstrate careful consideration of the issues. As was stressed by several intervenors at the public hearings, the health of caribou is of the utmost importance to the people in the north and the potential impacts to caribou and traditional resources has not been adequately evaluated by Diavik.

Also, Diavik has made the assertion that the risk to caribou would be lowered if processed kimberlite is deposited in the pits. In this regard, the MVRB notes that the project offers the potential for some environmental benefits (REA page 76). The processed kimberlite facility is currently in place and will remain in place until the life of the mine. It remains unclear how increasing the size (i.e., height) of the facility and its length of operation (i.e., a few more years) would increase the current risk the facility poses to wildlife or how this risk would be substantially reduced if processed kimberlite is placed in the pits. A full analysis of this assertion is required to understand the potential effects, which is something that Diavik has not presented. The MVRB encouraged Diavik to investigate the feasibility of moving extra-fine processed kimberlite off the current containment facility (REA page 77). This investigation must fully consider risk to wildlife (both real and perceived), and the Bathurst caribou herd in particular, and we recommend it be presented during the water licence amendment process.

Closing

The MVRB has made the following determinations:

- The acceptability of changes in the Lac de Gras area is low.
- the Diavik PKMW project is likely to result in significant adverse impacts on cultural use of the Lac de Gras area.
- Diavik's engagement has been insufficient to communicate the potential impacts of the Project on the environment and to understand how the Project might affect Indigenous people's cultural use of Lac de Gras.

The MVRB has prescribed measures to mitigate these potentially significant adverse impacts and to address the insufficient engagement that has occurred to date. The DKFN asserts that the enactment of these measures must occur before the project is referred to the next regulatory phase (i.e., water licence amendment by the WLWB). Some tangible results must be shown that will reduce the level of uncertainty and that demonstrate Diavik's level of commitment to engagement before it is permitted to proceed with the project.

In our closing argument to the MVRB we had recommended that given the level of uncertainty in the assessment of effects the Diavik Diamond Mines Inc. – Depositing Processed Kimberlite into Mine Workings project not be approved. The Report of Environmental Assessment, and Measures identified within it, do not allow for a process that would address this level of uncertainty in a timely manner should the project be granted approval. In closing, we remain

committed to working with the Government of the Northwest Territories and Diavik Diamond Mines Inc. on the successful resolution of concerns and look forward to further engagement on this project. Should you require any clarification on the information presented in our closing argument please contact our technical advisor, Dr. Marc d'Entremont, at mdentremont@lgl.com or 250-656-0127.

Sincerely,

A handwritten signature in black ink, appearing to read 'Louis Balsillie', with a stylized flourish at the end.

Chief Louis Balsillie

cc. Richard Simon, DKFN Resource Management Coordinator
Dr. Marc d'Entremont, LGL Limited (DKFN Technical Advisor)