



September 11, 2015

Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
P.O. Box 938
Yellowknife, NT
X1A 2N7

Attention: Chuck Hubert, Senior Environmental Assessment Officer

Re: EA1314-01 – Inclusion of Document Describing Updated Environmental Variables Related to the Jay Project and the Bathurst Herd to the Public Record

Dear Mr. Hubert:

In response to the Board's letter of September 8, 2015, Dominion Diamond writes to express our concerns and objection to the Independent Environmental Monitoring Agency's (IEMA) request to include new evidence on the Registry for consideration by the Board.

The evidence that IEMA is seeking to place on the registry consists of email correspondence from Dr. Bill Ross dated August 30, 2015 that relates to updated environmental variables from the CircumArctic Rangifer Monitoring and Assessment Network (CARMA) for the Bathurst Caribou herd for the years 2010 to 2014. IEMA previously attempted to submit this evidence to the Registry on August 25, 2015 without requesting permission from the Board for a late submission. The email was removed from the Registry and the Board issued a Notice of Proceeding on August 27, 2015 clarifying the process for submitting new evidence. The Board's letter of September 8, 2015 invites comments on whether "the information is relevant to the environmental assessment and the Review Board's decision". We submit that, in addition to relevance, it is incumbent upon the Board to consider the impact of a late submission on the developer's right to a fair and reasonable process. The parties were explicitly advised by the Board of the importance of adhering to the schedule for this proceeding. The Work Plan (updated July 22, 2015) and Notice of Proceeding (dated August 27, 2015) required the submission of all parties' technical reports by August 3, 2015, after which the Board directed that "[n]o additional evidence should be submitted for the record by parties between the submission of technical reports and September 1st to allow for a fair

and reasonable process whereby all parties are given the opportunity to comment on and respond to evidence.” This was further explained to all Parties by Board staff and Legal Counsel during the Pre-Conference hearing on August 5, 2015.

In our view, the Board should require adherence to the rules established for the timely submission of evidence unless a party demonstrates that: (a) the evidence that it seeks to add to the Registry will add value to the environmental assessment process, and (b) the party has provided a full explanation as to why the information could not have been included in its technical report.

With respect to the first criteria, Dominion Diamond recognizes the potential value of the CARMA data, but believes that the information presented by IEMA will not add value to the environmental assessment process. In January 2015 Dominion Diamond requested the most complete set of CARMA data for inclusion in the response to DAR-MVEIRB-9 as part of the Adequacy Review. Dominion Diamond was advised that data were not available for the post-2009 period and proceeded to complete the analyses with data from 1979 to 2009. Based on the 31 year CARMA data set, the results of the numerical analyses of climate variables detected no significant regional scale increasing or decreasing trends in temperature, drought, or precipitation on the Bathurst caribou post-calving and autumn range (DAR-MVEIRB-9). The addition of data from four more years is unlikely to change those conclusions given the variance in the 1979 to 2009 data. The graphs presented in IEMA’s submission based on the 2010 to 2014 CARMA data do not represent formal, statistical analyses of temporal trends. Further, the IEMA graphs obscure critical intrinsic spatial and temporal variation in the original data and in the derived indices.

With respect to the second criteria, Dr. Ross has not provided a sufficiently detailed response as to why the CARMA information could not have been submitted earlier in this proceeding. While Dr. Ross states that the 2010 to 2014 data only became available in “late spring-early summer”, he has not explained why IEMA was unable to obtain this information at that time for inclusion in IEMA’s technical report filed on July 31, 2015. We are concerned about the implication of allowing a party to submit late evidence when the party could have included that information in their technical report.



Dominion Diamond has been reasonable and accommodating of all requests from the parties or Board to include and assess new evidence throughout the process. The Developer's Assessment Report was submitted in late 2014 taking into account the best available information. We have subsequently undertaken a reassessment in various areas after requests from parties or the Board based on additional information through the Adequacy Review and Information Request processes. We have also met with technical experts, parties and the Board over this period either individually or together to discuss specific issues. For example, our assessment of effects to caribou habitat was redone to consider the 2014 fires, we conducted additional population modelling as requested, and we met with the technical experts to consider caribou energy and protein modelling requirements. However, as detailed above, the request for consideration of new evidence in the week before the hearing raises questions of fundamental fairness of the process.

Thank you for the opportunity to provide our views.

Regards,

A handwritten signature in black ink, appearing to read 'Richard Bargery', is written over the printed name.

Richard Bargery
Manager, Permitting Jay Project
Dominion Diamond Corporation