



MAY 19 2016

VIA EMAIL & FAX

Chief Louis Balsillie
Deninu Kué First Nation
P.O. Box 1899
FORT RESOLUTION NT X0E 0M0

Dear Chief Balsillie:

**Report of Environmental Assessment and Reasons for Decision for
Dominion Diamond Ekati Corporation's Jay Project (MVERIB file number
EA1314-01)**

As you are aware, on May 19, 2016, the Government of the Northwest Territories (GNWT) Minister of Lands, as the Minister with delegated authority under the *Mackenzie Valley Resource Management Act* (MVRMA) and on behalf of the other responsible ministers (RMs) adopted the Mackenzie Valley Environmental Impact Review Board's (MVEIRB or Review Board) recommendation that Dominion Diamond Ekati Corporation's (Dominion or the developer) proposed Jay Project (the Project) be approved subject to the implementation of the mitigation measures and developer's commitments in the Review Board's *Report of Environmental Assessment and Reasons for Decision* (the Report). The territorial responsible ministers with jurisdiction in relation to the Project are the Minister of Lands, the Minister of Environment and Natural Resources (ENR), and the Minister of Health and Social Services. The federal responsible ministers with jurisdiction in relation to the Project are the Minister of Transport and the Minister of Fisheries, Oceans and the Canadian Coast Guard as consolidated by the Minister of Indigenous and Northern Affairs.

The GNWT thanks the Deninu Kué First Nation (DKFN) for its detailed response letter received April 13, 2016 and active participation throughout the environmental assessment (EA) of the Project. This letter responds to the DKFN letter to outline some of the considerations taken by GNWT RMs in reaching their decision with respect to the Review Board's recommendation. It is clear from DKFN's letter that much thought was given to the measures recommended by the

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Review Board in the Report and the views of the DKFN as to how the measures would prevent likely significant adverse impacts on the environment and therefore accommodate potential adverse impacts to DKFN's asserted or established Aboriginal and Treaty rights. In addition to GNWT's comments that follow in this letter, GNWT notes that the Government of Canada (GoC) will also be responding with a separate letter to address DKFN's concerns in areas that are within the GoC's jurisdiction. Both the GNWT and the GoC have carefully considered DKFN's comments and have given full and fair consideration to the views expressed. GNWT and GoC share the view that the concerns DKFN has raised with respect to potential adverse impacts on DKFN's asserted or established Aboriginal and Treaty rights as a result of the Project have been meaningfully addressed through the EA process.

This letter responds in detail to the DKFN's concerns and suggestions. In this response there are instances where the GNWT is able to make a commitment with respect to the issues or concerns the DKFN has raised in its letter. There are also instances where the GNWT believes that changes to the wording of the existing measures in the Report are unnecessary, based on the existence of other forms of accommodation that address the underlying concern, or because the existing measure(s) allows for the DKFN's suggested course of action to take place. Finally, there are instances where the GNWT believes that changes to the language in the existing measures, or an alternative proposed course of action, is unreasonable or impractical.

GNWT RMs are pleased to note that on the first page of the DKFN letter there is stated support for the Project, and other projects in the traditional territory of DKFN. DKFN also outline remaining concerns with respect to the potential adverse impacts of the Project on its asserted or established Aboriginal and Treaty rights. This letter will now address each of the concerns and comments raised by DKFN in its letter.

Impacts to water and fish

With respect to DKFN's suggestion that closure objectives and criteria for water quality take into consideration the water quality objectives used throughout the life of the Project, GNWT notes that water quality objectives for the life of the Project, including closure, will be established during the regulatory process of the Wek'èezhìi Land and Water Board (WLWB). The GNWT believes it is unnecessary to add wording to the measure to address the concerns of the DKFN regarding Measure 4-1 as those concerns will be addressed during the regulatory phase.

DKFN suggests that perceived impacts to water quality be included in Measure 4-2(a) to avoid significant adverse impacts to traditional uses. Preventing perceived impacts to water quality is difficult as perceived impacts will differ at an individual level. The GNWT is of the view that water quality objectives should therefore meet a defined standard that can be set by the WLWB during the regulatory phase and enforced under the water licence.

The linkage of the development and implementation of contingencies to ensure pit lake water quality is compatible with traditional use after closure with the list of contingencies required under the site water management plan is also identified by DKFN for inclusion in the language of Measure 4-2(b). The GNWT notes that Measure 4-2a requires the submission of the site water management plan to the WLWB prior to dike construction; the plan is to include a list of contingencies. The fact that Measure 4-2b does not require that contingencies be explicitly developed for the establishment of meromixis prior to dike construction does not preclude those contingencies from being part of the site water management plan. Both Measure 4-2a and Measure 4-2b require the water quality in Misery and Jay pits to be compatible with traditional uses post closure. This requirement will require ongoing monitoring and contingency development. GNWT also notes that the site water management plan will be submitted to the WLWB for approval. DKFN will therefore have further opportunity to comment on the development of contingencies.

Regarding DKFN's concern that the measures and suggestions prescribed by the Review Board to address water quality do not address the issue of the seiching, GNWT notes that the measure, as set out by the Review Board, does not preclude the development of contingencies for the occurrence of seiching.

RMs also understand that the measures described in the Report are not intended to limit regulators such as the WLWB, from drawing their own additional conclusions when carrying out their regulatory duties. Issues such as seiching and the contingency plans for such a concern can be considered, and are best addressed, by the WLWB during the regulatory process.

In your letter, DKFN recommend that an independent expert be used to analyze the meromixis and the contingencies proposed by the developer. As noted, the site water management plan is to be approved by the WLWB. The WLWB acts as

an independent expert, and considers input from all parties in their decision-making and recommendation-making capabilities. Concerns of the DKFN surrounding meromixis will be addressed with the processes in place, as established by the measure as written.

The concern identified by DKFN regarding the possibility for water level changes at the Narrows to impact movement of fish species between the two water bodies and the continuation of traditional use of the area is addressed fully by Measure 5-1 and its requirement to maintain water levels. The development of the monitoring requirements to ensure water levels continue to allow for fish passage and traditional use of the area as an open water source, as well as the reporting of the monitoring results, as described in Measure 5-1, will be through the WLWB and the Aquatic Effects Monitoring Program.

As requested by the DKFN, meaningful consultation will be undertaken by the WLWB throughout the regulatory process, as required under the MVRMA and as outlined in their Engagement and Consultation Policy. GNWT is confident that through this process, triggers for management responses will be developed in collaboration with DKFN, as well as other Aboriginal governments and organizations. As well, Measure 13-2 requires Dominion to evaluate and improve the effectiveness of the mitigation of cultural impacts through adaptive management. To accomplish this, the measure requires Dominion to engage with Aboriginal parties to the Jay EA. Active engagement on Measure 5-1 to ensure traditional use of the area remains unaffected will therefore take place. GNWT is encouraged by the participation of the DKFN in the Jay EA process and looks forward to DKFN's continued participation at the regulatory phase of this Project development.

The GNWT notes that the DKFN have expressed concern regarding Commitment number 14 between Dominion and Transport Canada. This commitment relates to Dominion engaging Transport Canada regarding dewatering activities at Lac du Sauvage and any determination of the applicability of Sections 21 – 23 of the *Navigation Protection Act*. The *Navigation Protection Act* is federal legislation and the GNWT understands that the GoC has provided a response to the DKFN.

Impacts to caribou

The GNWT, as well as MVEIRB, heard and understand the concerns raised by DKFN and other Aboriginal governments and organizations, with respect to the

current decline of the Bathurst caribou herd. The GNWT also heard and understand the concerns regarding the potential for the Project to add to these impacts. The GNWT acknowledges that the Bathurst caribou herd has experienced a rapid population decline in recent years.

MVERIB stated in its Report that human activities and climate change related trends, have or will, cumulatively affect the Bathurst caribou herd. MVEIRB also stated that additional stresses, regardless of their magnitude, to the Bathurst caribou herd, a herd already experiencing cumulative effects, will be significant. To mitigate the residual effects of the Project so that they are not significant, MVEIRB requires Dominion to improve the design and use of roads, minimize and manage dust, use the rest of the Ekati site to offset the Project's remaining cumulative impacts to caribou, and use Traditional Knowledge (TK) more effectively in caribou research.

The Review Board has set out in the Report a suite of seven measures designed so that likely significant adverse impacts to the Bathurst caribou herd from the Project are no longer significant. RMs concur with that determination.

The Review Board's measures and developer's commitments are not the only form of accommodation that will prevent likely significant adverse impacts to the caribou and therefore accommodate potential adverse impacts to DKFN's asserted or established Aboriginal and Treaty rights. Many initiatives are underway to manage both the Bathurst caribou herd and its range; these were described during the EA process and are again discussed on page 13 of this letter. The GNWT also notes DKFN participation in a variety of the forums available to discuss management actions for herd recovery and looks forward to DKFN's continued input in these processes.

Concerns of the DKFN regarding the ability of the caribou-related measures to mitigate the impacts of the Jay road crossing the esker have been heard by the GNWT. The GNWT also acknowledges the DKFN's view that any mitigation measures surrounding the road will be experimental and may not mitigate the disruption to the caribou along their migration route. MVEIRB considered all the evidence put before them by all parties to the Jay EA, including the DKFN, and was convinced of the critical importance of caribou to people of the NWT and communities that depend on them. The Review Board noted on page 125 of its Report, that it accepts that the management plans and commitments discussed in

the Report are necessary to “mitigate the significant adverse impacts that would otherwise be likely from the Jay Project”. RMs agree with the Review Board’s approach and conclusions that the suite of mitigation measures will reduce potential impacts to caribou and will accommodate adverse impacts to the asserted or established Aboriginal and Treaty rights of the DKFN.

Impacts to caribou: Measure 6-1

With respect to the DKFN opinion that any mitigation measures surrounding the road will be experimental, GNWT would like to clarify that novel mitigations and accommodations such as the Caribou Road Mitigation Plan (CRMP) all formed the evidence considered by the Review Board in its determination of significance and creation of mitigation measures. RMs agree with MVEIRB that the concern of the DKFN regarding the Jay road can be addressed through Measure 6-1, the CRMP, the Caribou Offset and Mitigation Plan (COMP), developer’s commitments (including commitment #54, 56, 57, 58, 59, 62, 63, 64, 66, 67, 68, 69, 70, 71, 72, 101, 110, 113; many of these commitments are for the inclusion of TK in the design and monitoring of the road), and existing processes such as the Wek’èezhì Renewable Resources Board (WRRB) processes.

DKFN states that relying on real-time caribou collar-data will be insufficient for detecting caribou in the vicinity of the Project, and notes in particular that “the efficiency with which the data from collared caribou is attained and communicated needs to be improved.” Measure 6-1 requires that Dominion use real-time caribou collar satellite information *and other detection systems* to enable early detection of caribou in the vicinity of the road. The use of other early detection systems, as required by the measure, can be used in concert with the collar data, the combined effect of which the GNWT believes will address the DKFN concern around the limitations associated with collar data. In fact, some of the DKFN suggestion as outlines in its correspondence – namely the wildlife monitoring (as identified in the CRMP) to detect the presence of caribou – are examples of such detection systems committed to by the developer. Finally, in response to a hearing undertaking, Dominion committed to developing and financially supporting a Caribou Monitoring Strategy/Plan in collaboration with Impact and Benefit Agreement communities. This strategy will include community site-based monitoring programs for the caribou spring and fall migrations.

Regarding Measure 6-1, DKFN also note concerns with dust suppression and recommend the deployment of remote cameras and wildlife monitoring

conducted by traditional land users to detect the presence of caribou before they are affected by the proposed Jay Project and the rest of the Ekati mine. The GNWT notes that the use of remote cameras and wildlife monitoring are not precluded by Measure 6-1 as written. As stated above, Measure 6-1 is worded “caribou collar satellite information and other detection systems.”

Finally, DKFN requested chemical dust suppression methods be tested at Ekati first, and then applied on the Jay road; the inclusion of TK into the evaluation of the effectiveness of chemical dust suppressants on the lichen and caribou is also requested. DKFN note that the effectiveness should be proven at the Ekati site before the Jay Project is developed. GNWT is of the view that the addition of this suggestion to Measure 6-1 is unnecessary. As indicated in a response to a hearing undertaking, and solidified in Measure 6-2(a), Dominion is currently completing a pilot test application of an alternative dust suppressant (EnviroKleen 2800). If successful, results from the program would be applied throughout the Ekati mine site, including Jay.

In Dominion’s undertaking response (DAR-MVEIRB-UT2-06) where the dust suppression study is described, it is stated that the proposed methods will be circulated for discussion after the completion of the dust suppression pilot project report. The opportunity for TK to be included in the final methodology for the dust suppression study therefore exists currently; a modification to Measure 6-1 is therefore unnecessary.

Impacts to caribou: Measure 6-2

On page nine of the DKFN letter concern is raised regarding: (1) the ability of the GNWT to properly quantify the offsetting program and (2) whether the offsets are actually offsets in the strictest sense. Regarding the defining of offsets as ‘true offsets’, GNWT would like to note that the definition does not change either what is outlined in the measure, or the requirements of the developer to implement what is prescribed in the measure. The Review Board has determined that the suite of measures directed at the developer will prevent likely significant adverse impacts to caribou as a result of the Jay Project. RMs concur with that determination.

With respect to DKFN’s specific concern that the GNWT does not have the capacity to properly quantify the offsetting program, the GNWT would like to state that by accepting the Report and the measures therein, the GNWT is legally

required to implement the measures. The DKFN should therefore be assured that the GNWT does have the capacity to implement Measure 6-2(b).

DKFN's letter also states, with reference to Measure 6-2, that the DKFN believe that the experimental COMP be tested first at the existing Ekati mine to determine effectiveness. Determining if the caribou offset and mitigation measures are capable of reducing impacts to the Bathurst caribou herd from an operating mine before being deployed at Jay is unnecessary. The measures' adequacy will be tested and reported on through the annual reporting requirements of Measures 13-1, 13-3 and 13-4. Adaptive management is a requirement of Measure 13-1.

Regarding the DKFN statement that it is unsupportive of research into potential methods of evaluating and measuring the effectiveness of offsetting options as described in the COMP occurring at the Jay Project. GNWT acknowledges the DKFN's view that any mitigation measures surrounding the COMP will be experimental but note that while the COMP is a novel and innovative mitigation for caribou in the north, offsets for caribou exist elsewhere across Canada. MVEIRB considered all the evidence put before them by all parties to the Jay EA, including the DKFN, and was convinced of the critical importance of caribou to people of the NWT and communities that depend on them. RMs agree with the Review Board's approach and conclusions: the suite of mitigation measures will reduce likely significant adverse impacts to caribou so that they are no longer significant and will therefore accommodate potential adverse impacts on the asserted or established Aboriginal and Treaty rights of the DKFN.

Consultation on the implementation of measures at the existing Ekati mine, along with the incorporation of TK to enhance mitigation measures was also requested. The GNWT is confident that Dominion will continue to engage with DKFN and other Aboriginal parties to the Jay EA, including on the implementation of Measure 6-2 (offsetting). Confidence in the developer to continue actively engaging and responding to Aboriginal communities is based on past experience in the Jay EA. As the DKFN will recall, the wildlife road management protocols were proposed by Dominion as part of the updated Wildlife Effects Monitoring Program (WEMP) for the Jay Project. During technical sessions in April 2015, the developer committed to provide a separate CRMP that would give further details on strategies to reduce the impacts from the Jay and Misery roads to caribou. Dominion provided a draft CRMP in May 2015 and hosted a workshop with parties to the EA later the same month. The developer then incorporated

suggestions arising from the workshop into a second version of the CRMP and again held a workshop (June 2015) to discuss further comments and suggestions on the revised CRMP.

With respect to the suggestion by the DKFN that the GNWT should conduct a study in the scope and effectiveness of caribou offsetting measures, including those that have been developed for other caribou ranges in the Arctic and sub-Arctic, the GNWT is legally bound to implement Measure 6-2(b) which as written accommodates the request by the DKFN. The GNWT notes that examination of existing approaches to offsetting for caribou in the Arctic and sub-Arctic, if they exist, and in other jurisdictions, would be part of the methodology for implementing Measure 6-2(b).

Impacts to caribou: Measure 6-3

The GNWT notes the position of the DKFN: that no management plan is going to be able to effectively suppress dust from the Ekati mine site to a point where it is not causing an impact to caribou, caribou habitat, or caribou forage (i.e. lichen). GNWT reiterates its concurrence with the recommendation of the Review Board, and position that the mitigation measures will prevent likely significant adverse impact to caribou and caribou habitat as a result of the Jay Project.

With respect to the request by the DKFN to apply the updated Air Quality Emissions Monitoring and Management Plan (AQEMMP) at the Ekati mine to test its effectiveness as a caribou mitigation measure, the GNWT notes that the existing Ekati AQEMMP is the basis for the AQEMMP that will be applied to the Project. The existing AQEMMP will be expanded spatially to include monitoring the effects of the Project, and will include monitoring during the construction of the Jay road. Additionally, it will include calculation of emissions to compare it to the predictions of the Developer's Assessment Report. Altering Measure 6-3 to include applying the Project's AQEMMP to the Ekati main site is unnecessary; the measure is worded adequately to address the environmental concerns expressed by DKFN.

DKFN also requested that the DKFN and other Aboriginal groups be provided opportunities to contribute to the AQEMMP as it becomes finalized. The GNWT notes that the draft conceptual AQEMMP prepared for the Project will be subject to revisions and Measure 6-3 itself requires Dominion to submit an updated AQEMMP. The draft conceptual AQEMMP for the Project underwent not only

public review as part of the Project EA, but Dominion also hosted a technical workshop to specifically discuss the AQEMMP.

The GNWT is also pleased to note that the developer has publicly stated that it will circulate the next version of the draft conceptual AQEMMP for the Project for review and hold a technical workshop to discuss and receive input on the draft plan. Following the receipt of feedback, the developer has agreed to circulating the revised draft conceptual plan and finalizing the plan for construction based on feedback received (operations to be addressed prior to the operations phase). DKFN will have further opportunities to provide input on the AQEMMP.

Impacts to caribou: Measure 6-4

In its letter, DKFN state concern with the lack of enforceability of the dustfall objective, as DKFN state this objective is not legally binding. The GNWT notes that the approval of the Report is subject to the implementation of the measures and developer's commitments contained within the Report, including Measure 6-4 which states that an interim dustfall objective for the project must be developed and that Dominion will use the objective to reduce impacts to caribou and caribou habitat from dustfall. In addition, the GNWT notes that the result of the dustfall sampling will be reported as part of the AQEMMP, as well as under the requirements of Measures 13-3 and 13-4. There are also reporting and approval requirements under the Ekati Environmental Agreement (Environmental Agreement).

DKFN also recommended that GNWT consult with DKFN members over the creation of the interim dustfall objective, and incorporate TK into the process. The GNWT recognizes that Measure 6-4 is for a provisional objective to be developed in the short term until such time as adequate technical and TK research and engagement processes can be conducted to support development of an enforceable dustfall standard appropriate for the NWT. While specific process considerations were not addressed in the measure, GNWT views Measure 6-4 as a step in the process to develop a standard, which will include more targeted research and consultation. The GNWT is also committed to looking at opportunities to include TK as well as research conducted at the Ekati mine and other industrial developments, and existing dustfall standards elsewhere in Canada, when developing the dustfall objective. However, given the timelines imposed by the measure, and the developer's stated goal of construction in 2016, consultation with parties to the Jay EA on the interim dustfall objectives is not possible. Once the objective is set, it will be shared with interested parties.

The GNWT also notes the recommendation from the DKFN for the establishment of a timeline for GNWT to set dustfall standards for all industrial developments in the NWT. It is outside the Review Board's jurisdiction to put binding timelines on the GNWT for the development of regulations; furthermore, a timeline could needlessly restrict the amount of time available to conduct adequate technical and TK research (as described above) for the purpose of developing an enforceable dustfall standard for the NWT. For these reasons, the GNWT believes that the suggested modifications to Measure 6-4 are unnecessary and unreasonable.

Impacts to caribou: Measure 6-5

With respect to the TK Elders group, the DKFN raised concerns about: the need to be involved in all phases of the research process; the narrow, prescribed scope of the measure; the independence of the TK Elders group; and the lack of assurance that Dominion will give full consideration to the recommendations of the TK Elders group.

The GNWT was pleased to see the April 25, 2016 letter from Dominion and the commitment from Dominion to work with communities to address the concerns about the TK Elders group. In its letter, Dominion informed the GNWT and GoC that they will be working with communities to address concerns around the independence of the TK Elders group, the ability to access outside expertise, public reporting, and to consider better ways to incorporate TK into the construction and operation of the Project. A draft Terms of Reference for the TK Elders group has also been distributed for comment, and a workshop is being proposed for June 2016. This commitment addresses the main concerns identified by DKFN around the TK Elders group.

Further, GNWT is confident that the recommendations, advice and reports put forth by the TK Elders group will be given the appropriate consideration by Dominion. GNWT also notes that any advice provided to regulatory authorities such as the WLWB by the TK Elders group will be fully and fairly considered by the authorities during the regulatory process. Through the reporting requirements of Measures 13-3, 13-4, as well as Measure 6-5 itself, outcomes of the implementation will be made publically available, including information on whether advice provided by the group is being implemented.

In its letter to GNWT, DKFN noted the scope of Measure 6-5 was limited and requested TK be incorporated into mine design, construction, operation, and closure. DKFN also indicated the collaborative research project should be more inclusive and include zone of influence (ZOI) monitoring, management responses, and impacts on caribou health. In the GNWT's view, Measure 6-5 does not preclude the incorporation of TK into the mine design, construction, and operations, or the collaborative ZOI research initiative and notes Dominion's commitment to engage with DKFN and other Aboriginal parties to the Jay EA to establish a Terms of Reference for the group. The GNWT does not believe that modification of the wording of Measure 6-5 is necessary to address the concerns of the DKFN.

During the EA process, Dominion made various commitments to include TK in the development, implementation, and monitoring of various management plans, most notably the COMP (PR#673). These commitments were also noted in Dominion's April 25, 2016 letter. The developer committed to ensuring TK is used to inform the development of the COMP, reviewing previous recommendations from communities on how TK should be aligned in caribou monitoring programs, and regular engagement on the COMP.

Dominion also committed to providing funding to relevant Bathurst Herd initiatives, with the expectation that TK holders would be involved in the research planning and follow-up with respect to research undertaken by governments and co-management boards. Finally, the developer committed to continued engagement and alignment of TK in the development of accelerated reclamation efforts; initial activities for engagement were listed by the developer in hearing undertaking response DAR-MVEIRB-UT2-06 and include the completion of a long-term strategy for community engagement and TK alignment into the accelerated reclamation efforts. GNWT is confident the developer will continue to incorporate and rely on TK in mine design, planning, construction, operation, and closure.

For certainty, commitments made by the developer form part of the scope of the project as assessed by MVEIRB. RMs take the position that the Review Board's recommendation is subject to the implementation of the developer's commitments. The project, as assessed and approved, therefore requires the implementation of such commitments.

Impacts to caribou: Measure 6-6

DKFN's letter voices the serious concerns of the DKFN with respect to caribou management. In commenting on Measure 6-6, DKFN state that if there is no hunting allowed in the mobile zone, then there should be no other impediments to the caribou in that zone also, noting that the Project is located in the mobile zone. Further, DKFN states that the position of the DKFN is that any disturbance in the mobile zone should be suspended until the Bathurst caribou herd has recovered to a sustainable harvest level. DKFN elaborates further by requesting the management plan be developed by 2017 and address the full range of factors and disturbances impacting caribou recovery. An interim definition of the maximum level of acceptable disturbance in the Bathurst caribou herd's range is also requested. Finally, there is a request that DKFN and other Aboriginal communities fully and equally participate in the creation and approval of management plan(s) and in the establishment of the aforementioned acceptable disturbance levels. GNWT notes DKFN's recommendations on the content of a future Bathurst caribou management plan and recognizes DKFN and other Aboriginal communities' as full and equal participants in these processes. GNWT suggests that the current timelines associated with existing processes are necessary to ensure full and equal participation of all parties.

The GNWT notes that work is underway on range planning for the Bathurst caribou herd, which will describe how the Bathurst caribou range will be managed over time and help prepare for any future changes to habitat. GNWT is leading that collaborative process. A structured decision making approach is being used to explicitly investigate trade-offs in social, cultural, economic and ecological values associated with a range of approaches to managing disturbance on the range. Thresholds of acceptable change related to disturbance will be investigated through this process, which will also identify key indicators that can be tracked over time to monitor progress of plan implementation. The timeline of the development of the range plan is March 2018.

The Bathurst Caribou Herd Cooperative Advisory Committee is a requirement of the Tłıchq Agreement. Once established, it will develop a long term mechanism for management of the Bathurst caribou herd that will address all issues of concern related to the herd including harvest, predator control and habitat management. Member organizations, which include representation from all Aboriginal user groups, including DKFN, are currently reviewing the Terms of Reference for this group.

Until a long term management plan for the Bathurst herd can be developed, GNWT is working through the co-management processes outlined in the Tłıchq

Agreement and the NWT *Wildlife Act* to implement interim management actions (2016 to 2019) that will support reversal of the Bathurst herd's decline and promote an increase in the number of breeding females in the herd. On December 15, 2015 the Tłıchǫ Government and GNWT-ENR submitted a *Joint Proposal on Caribou Management Actions for the Bathurst Herd: 2016-2019* to the WRRB. Actions being considered include options for harvest management, establishment of a community-based predator management approach, and continued monitoring of the Bathurst herd. The WRRB makes a final determination on the joint management proposal. A decision is expected in May 2016.

The GNWT concurs with the Review Board's recommendation and believes that the measures set out in the Report, along with developer commitments, processes such as those undertaken by the WRRB, and processes currently in place as a result of the previous EAs of the Ekati mine are sufficient to prevent significant adverse impacts to the Bathurst caribou herd from the Project. The Review Board considered all information put forward by all parties to the Jay EA in determining whether significant adverse impacts are likely. The Review Board also fully considered the views and opinions of all parties in its crafting of measures to prevent significant adverse impacts. The GNWT is of the view that the suggestions made by DKFN regarding Measure 6-6 are unnecessary.

Cultural Aspects and Traditional Knowledge

Measures 7-1 and 7-2 mitigate the Project's impacts to culture and traditional use areas and/or culturally valued components. The GNWT notes the view of the DKFN that these measures will not address its concerns as the DKFN believe Measure 7-1 would restrict the utility of the framework to issues within the "cultural sphere". DKFN states that Measure 7-1 should be synthesized with Measure 6-5 for a more robust and holistic approach to "engaging communities through their TK in science and planning". Finally, DKFN noted that funding should be provided to DKFN and other Aboriginal groups to develop a TK Protocol suggested by the Review Board.

The GNWT notes that MVEIRB recommends mitigation measures only where they have determined that the measure will prevent a likely significant adverse impact. The imposition of a requirement for the development of a TK Protocol on Aboriginal groups, based on the inclusion of the Protocol development as a suggestion, would not mitigate a significant adverse impact. As such, the GNWT is of the opinion that to require the developer to fund development of a TK Protocol is unreasonable and unnecessary to prevent a likely significant adverse impact.

Measure 7-1 does not limit the use of TK within the Project design, operations, monitoring, closure, and post closure phases. GNWT reiterates its position that it is confident that Dominion will continue to incorporate TK into all aspects and phases of the Project, as appropriate. It is important to note that the inclusion of TK and/or the preventing of significant cultural impacts is further solidified in other measures described in the Report. Measure 4-1 is designed to prevent significant cultural impacts after closure from changes in water quality; the mechanism for this is the WLWB. TK can be provided during the water licencing for the Project. Similarly Measures 4-2 and 4-3 focus on the prevention of significant adverse impacts to traditional uses of water in the Jay area post-closure and involves the WLWB. Measures 6-1, 6-2, 6-5, 13-2 also have requirements for the inclusion of TK.

Regarding the request by the DKFN for the establishment of a “Culture Camp Band” comprised of representatives from Aboriginal parties to the Jay EA to oversee the implementation of Measure 7-2, the GNWT finds this request unreasonable. Measure 7-2 requires that Dominion consult with Aboriginal parties to the Jay EA to decide on the location, timing and frequency of use of the culture camp; the measure does not prescribe that all Aboriginal groups attend the camp at the same time.

Maximizing Benefits and Minimizing Impacts to Communities

The GNWT notes that what the DKFN have requested with respect to Measure 8-1 is consistent with the wording in the original measure, noting the emphasis the DKFN have placed on maximizing the positive socio-economic benefits (as opposed to addressing negative socio-economic impacts). The GNWT is pleased to accommodate the DKFN and commits to discussing social and economic outcomes of resource development with the DKFN. The GNWT, through venues such as the Community and Diamonds Report, already reports on various social and economic indicators. The GNWT is open to adding more indicators if useful and necessary.

The DKFN also state that the effectiveness of GNWT programs should be evaluated based on feedback from people, families, or communities accessing these programs, and that adequate funding should be set aside based on the current and future utilization of the programs. Program evaluation undertaken by the GNWT considers a variety of factors and input with funding allocation based on established criteria. The GNWT commits to discussing the effectiveness of

GNWT programs to address issues prioritized at the individual, family, and community level. The request of the DKFN is addressed through pre-existing programs, evaluation formats, and funding allocation criteria.

Measure 8-2 mitigates significant adverse socio-economic impacts on women. While recognizing Dominion's initiatives to address the underrepresentation of women employed at Ekati, the Review Board determined that Dominion should make additional and all reasonable efforts to address gender inequity in its operations. The scholarship programs offered by Dominion (the Ekati Plus Scholarship, and annual scholarships to youth in IBA communities) are available to women, as are the apprenticeship and training programs.

While the measure, scholarships, and programs do not address DKFN's specific request that 'women in management level positions' be included in specific commitments and outcomes or that retention of women be included in the update of Dominion's strategy or policies, the GNWT notes that the measure does not preclude Dominion from working on strategies to increase or retain the number of women in those positions and at the mine in general; the scholarships and programs are available to women, as well as men.

The GNWT recognizes the importance of the requests by DKFN, that Dominion have strategies and initiatives aimed at hiring women into management roles. While DKFN's suggestions with respect to improving opportunities for women are laudable, the GNWT is of the view that the suggestions would not mitigate adverse impacts to DKFN's asserted or established Aboriginal and Treaty rights.

GNWT believes the request for on-site day care for children under school age for mine employees is both unreasonable and impractical.

Closing

The views expressed by the DKFN in its letter are important and GNWT looks forward to continued DKFN participation in the regulatory phase of the Project. The GNWT emphasizes that consultation and accommodation with respect to Aboriginal and Treaty rights do not end with the responsible ministers' decision. The Project will now proceed to regulatory and other processes which will include opportunities for Aboriginal governments and organizations to offer input on authorizations and management plans and help ensure that potential adverse impacts to Aboriginal and Treaty rights, as necessary, are accommodated. The GNWT encourages the DKFN to participate in these

processes and the developer's continuing engagement initiatives.

Thank you for taking the time to provide your views.

Sincerely,



Terry Hall
A/Assistant Deputy Minister
Planning and Coordination
Department of Lands

- c. Shannon Cumming, Assistant Deputy Minister, Environment and Natural Resources

Derek Elkin, Assistant Deputy Minister, Health and Social Services

Mark Hopkins, Director General, Northern Resources and Environment,
Indigenous and Northern Affairs Canada

Matthew Spence, Director General, Northern Projects Management Office

David Burden, Regional Director General, Central and Arctic, Fisheries and
Oceans Canada

Michele Taylor, Regional Director General, Prairie and Northern Region,
Transport Canada

Mark Cliffe-Phillips, Executive Director, Mackenzie Valley Environmental
Impact Review Board

Ryan Fequet, Executive Director, Wek'èezhìi Land and Water Board

Claudine Lee, Head of Environment and Communities, Dominion Diamond
Ekati Corporation