



MAY 19 2016

VIA EMAIL & FAX

Chief Felix Lockhart
Łutselk'e Dene First Nation
P.O. Box 28
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Dear Chief Lockhart:

Report of Environmental Assessment and Reasons for Decision for Dominion Diamond Ekati Corporation's Jay Project (MVEIRB 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 Łutselk'e Dene First Nation (LKDFN) for its detailed response letter dated April 4, 2016 and active participation throughout the environmental assessment (EA) of the Jay Project. This letter responds to LKDFN's 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 LKDFN's letter that much thought was given to the measures recommended by the Review Board in the Report and the views of the LKDFN as

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to how the measures would prevent likely significant adverse impacts to the environment and therefore accommodate potential adverse impacts to LKDFN'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 LKDFN's concerns in areas that are within the GoC's jurisdiction. Both the GNWT and the GoC have carefully considered LKDFN's comments and have given full and fair consideration to the views expressed. GNWT and GoC share the view that the concerns LKDFN has raised with respect to potential adverse impacts on LKDFN'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 LKDFN'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 LKDFN 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 LKDFN'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.

Conditional approval of the Project

The GNWT would like to begin by responding directly to the submission LKDFN makes in the Executive Summary of its letter, on page 5, wherein LKDFN submits that approval of the Jay Project must be conditional on: (1) the demonstrated recovery of the Bathurst caribou herd to sustainable harvesting levels, and (2) evidence that the proposed mitigation measures are proven to be effective, based on implementation, testing, and monitoring at the company's existing Ekati Mine. GNWT RMs gave thoughtful consideration to that approach. Respectfully, the GNWT believes that to make the Project conditional upon the achievement of those two actions is unreasonable, and offers the following as an explanation for why GNWT believes that to be the case.

The MVRMA requires the environmental assessment process to have regard to environmental protection, the protection of social, cultural and economic well-being of residents and communities, and the importance of conservation to

Aboriginal Peoples' way of life. When assessing a development, MVEIRB must carefully and fairly consider all the evidence presented to it and determine whether the development is likely to be a cause of significant adverse impact or significant public concern. In arriving at its conclusions, MVEIRB must balance the interests of all those involved in the process, and must often decide among opposing positions.

During the EA, MVEIRB heard evidence from parties on matters including the state of the Bathurst caribou, the cultural significance of caribou, the nature and extent of the Project's potential impacts on the Bathurst caribou herd and on culture and communities, and methods of mitigating those impacts. MVEIRB also heard evidence from parties about the social and economic benefits of the existing Ekati mine and of the Jay Project, including from Aboriginal governments and organizations who were supportive of the Project (Deninu Kué First Nation and the Kitikmeot Inuit Association). The Board found that the Jay Project would provide substantial economic benefits to the people, communities and governments in the Northwest Territories and would also provide substantial positive impacts to some health and social indicators.

On the basis of the evidence presented, MVEIRB determined that the Project would likely have a significant adverse impact on the Bathurst caribou herd, and that this impact could be prevented with the suite of measures and developer commitments in the Report. MVEIRB recommended that the project be approved to proceed on this basis.

The GNWT notes that in developing its measures, the Review Board took into account existing and planned mechanisms to mitigate potential significant adverse impacts to the environment. Many of these mechanisms also accommodate adverse impacts to established or asserted Aboriginal and/or Treaty rights. These mechanisms include the existing Ekati Environmental Agreement (Environmental Agreement) and Socio-Economic Agreement (SEA); mitigation, monitoring and adaptive management processes for existing Ekati operations; commitments made by the GNWT during the EA process; GNWT review and approval of management plans as required under the Environmental Agreement and in the Report; and regulatory processes such as the Wek'èezhìi Land and Water Board (WLWB) land use permitting and water licensing process. The Environmental Agreement requires the development, implementation and review of management and monitoring plans for air, aquatic life, and wildlife, as

well as the development, implementation and review of closure and reclamation plans. The Environmental Agreement also established the Independent Environmental Monitoring Agency (IEMA), which has a mandate to serve as a public watchdog of the developer and of the regulatory process for the Project.

After careful review of the evidence, MVEIRB's report, the recommended measures, the developer's commitments and engagement record, and the record of Aboriginal consultation, GNWT believes that MVEIRB reached a reasonable conclusion. On this basis the territorial and federal responsible ministers adopted MVEIRB's recommendation.

RMs carefully considered a balance of interests in making the decision to adopt the Review Board's recommendation. The GNWT believes that the measures and developer's commitments outlined in the Report, other forms of accommodation, and the upcoming regulatory processes will prevent likely significant adverse impacts to the biophysical and socio-economic environment, and to asserted or established Aboriginal and Treaty rights of the LKDFN, and that it would therefore be unreasonable to delay the Project.

The GNWT would now like to take the opportunity to address each of the concerns and comments LKDFN raises in its letter.

Impacts to water quality: Measure 4-1

With respect to LKDFN's suggestion that water quality objectives and criteria be established for water quality throughout the entire life of the proposed Project, GNWT notes that water quality objectives for the life of the Project will be established during the regulatory process of the WLWB. LKDFN also requested to be consulted during the establishment of water quality objectives and criteria. As required under the MVRMA and outlined in the WLWB's Engagement and Consultation Policy, meaningful consultation will be undertaken during the WLWB's regulatory process. The GNWT believes it is unnecessary to add wording to the measure to address these concerns of the LKDFN.

Impacts to water quality: Measure 4-2

LKDFN suggests that perceived impacts to water quality be included in Measure 4-2(a). 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.

Contingencies and specific details regarding pit lake water quality and the site water management plan are also identified by LKDFN for inclusion in the language of Measure 4-2(b). GNWT notes that the measure, as set out by the Review Board, does not preclude the development of contingencies for the occurrence of seiching. In fact, the measure requires the developer to submit to the WLWB for approval, the list of contingencies and the timeline requested by the LKDFN. Consultation with LKDFN will continue through the WLWB processes.

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.

Impacts to water quality: Measure 4-3

Regarding LKDFN's request for inclusion in the decision-making process surrounding the location of disposal of fine-processed kimberlite (FPK) (Measure 4-3), GNWT notes that the measure requires the WLWB to approve the deposition of the FPK. The contributions of all parties to the WLWB processes are considered by the WLWB in their recommendations and by the Minister of ENR in his decision-making process associated with the approval of water licences. As previously noted, meaningful consultation will be undertaken by the WLWB throughout the regulatory process as required under the MVRMA and outlined in their Engagement and Consultation Policy.

Impacts to water quality: Measure 4-4

LKDFN proposes that Dominion be required to give careful consideration to the recommendations of the independent dike review panel and, if the recommendations of the panel are not adopted by Dominion, a sound rationale be publically provided. Measure 4-4 is intended to reduce the risk of dike failure and its associated significant impacts. GNWT notes both the developer's ongoing engagement on mine planning and operations and their ongoing commitment to safety, and are confident that the developer will give full consideration to recommendations from the panel.

As well, as directed by Measure 4-4, the panel is to provide their recommendations both to Dominion and to the WLWB. The review process undertaken by the WLWB is a public process – parties and the panel will know

both what they and others recommended, as well as what recommendations were adopted by the developer. Therefore the GNWT believes that modifying the measure to include LKDFN's recommendations is unnecessary.

Impacts to fish and fish habitat

The concern identified by LKDFN regarding the ability of the developer to maintain the water level at the Narrows during the operation of the Project (Measure 5-1) is addressed fully by the measure and its requirement to maintain water levels. The description of the monitoring 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 LKDFN, meaningful consultation will be undertaken throughout the regulatory process by the WLWB as required under the MVRMA and as outlined in their Engagement and Consultation Policy. GNWT is encouraged by the participation of the LKDFN in the Jay EA process and looks forward to your continued participation at the regulatory phase of this Project development.

Impacts to caribou

The GNWT as well as MVEIRB, heard and understand the concerns raised by LKDFN 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. GNWT acknowledges that the Bathurst caribou herd has experienced a rapid population decline in recent years.

MVEIRB 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's measures and developer's commitments are not the only form of accommodation that will prevent likely significant adverse impacts to caribou and therefore accommodate potential adverse impacts to LKDFN'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. GNWT also notes LKDFN participation in a variety of the forums available to discuss management actions for herd recovery and looks forward to LKDFN's continued input in these processes. Taken as a whole, the GNWT believes the measures, developer's commitments, and the other existing accommodations will prevent likely significant adverse impacts to caribou as a result of the Jay Project.

Concerns of the LKDFN 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 LKDFN'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 it by all parties to the Jay EA, including the LKDFN, 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 conclusion: that the suite of mitigation measures will reduce likely significant adverse impacts to caribou so that they are no longer significant and will accommodate adverse impacts to the asserted or established Aboriginal and Treaty rights of the LKDFN.

Impacts to caribou: Measure 6-1

With respect to the LKDFN 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 LKDFN 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.

Where LKDFN states that relying on real-time caribou collar-data will be insufficient for detecting caribou in the vicinity of the Project, GNWT notes that Measure 6-1 is worded “caribou collar satellite information and other detection systems.” The request by LKDFN to deploy remote cameras and use wildlife monitoring as early detection systems is addressed by Measure 6-1. Additional wording to more fully prescribe detection systems is, in the opinion of the GNWT, unnecessary.

Regarding Measure 6-1, LKDFN also note concerns with dust suppression and requests chemical dust suppression methods be tested at Ekati first, and then applied on the Jay road. GNWT’s view is 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 the Jay Project.

The CRMP, along with Measures 6-3 and 6-4 are all intended to reduce the impacts of dust on caribou. Measure 6-3 specifically requires the application of dust suppressant to control dust emissions. LKDFN will have the opportunity to be involved in the plan development, as the CRMP is required to be submitted to ENR for approval prior to construction of the Jay road. GNWT is pleased to commit to ensuring there is an opportunity for parties, including the LKDFN, to provide input into the CRMP prior to its approval. GNWT is also confident that the developer will continue to meaningfully engage with Aboriginal parties to the EA on the development of the CRMP.

Confidence in the developer to continue actively engaging and responding to Aboriginal communities is based on past experience in the Jay EA and the developer’s letter of April 25, 2016 committing to do so. 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 providing 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 Jay 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.

Impacts to caribou: Measure 6-2

Similar to the CRMP, the COMP is an accommodation that arose after it became clear that although residual effects of the Project to caribou would be small, concerns remained. The COMP, as described above, was committed to by the developer during the EA process. Dominion responded to concerns of parties to the Jay EA regarding the COMP by hosting workshops and providing multiple versions of the COMP for review and comment. Measure 6-2(a) builds on Dominion's commitments.

LKDFN notes in its letter that it fails to see how the COMP (Measure 6-2(a)) will result in no net addition of impact to the Bathurst caribou herd. LKDFN also states that it does not believe the offsets suggested to date are offsets in the strictest sense as the LKDFN do not believe that the impacts associated with altering caribou migration routes and reducing the reproductive capacity of the Bathurst caribou are impacts that can be adequately offset. GNWT RMs would like to restate their agreement with the Review Board's determination that the implementation of the suite of measures and developer commitments will prevent likely significant adverse impacts to the Bathurst caribou herd as a result of the Jay Project. Defining the word "offset" does not alter that determination.

Determining if the caribou offset and mitigation measures are capable of reducing impacts from an operating mine on the Bathurst caribou herd before being deployed at the Project 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. With respect to LKDFN's specific concern that the GNWT does not have the capacity to properly quantify the offsetting program, the GNWT would like the state that by accepting the Report and the measures therein, the GNWT is legally required to implement the measures. The LKDFN should therefore be assured that the GNWT does have the capacity to implement Measure 6-2(b).

While measures relating to mitigation of impacts to caribou do contain the requirement for research, GNWT notes that there is also a requirement to implement the findings of the research and adaptively manage those components of the Project that may be impacting the environment. Given the suite of measures that detail timelines, responsible regulatory authorities, a public review and approval process, and key mitigation actions required through all Project phases, the GNWT is of the belief that the concern of the LKDFN is being

addressed through the measures of the Report. As a result, the GNWT's view is that a requirement for the COMP to be tested at the existing Ekati mine before application at the Project site is unreasonable and unnecessary. The GNWT is, however, pleased to commit to ensuring there is an opportunity for parties, including the LKDFN, to provide input into the COMP prior to its approval.

The LKDFN letter contains a recommendation that the GNWT build on Measure 6-2(b) and conduct a study on the scope and effectiveness of existing COMPs focusing on those developed for caribou in the Arctic and sub-Arctic. GNWT is legally required to implement Measure 6-2(b) which as written, does not preclude the request by the LKDFN. The GNWT commits to accommodating the LKDFN and 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 that LKDFN has two requests related to Measure 6-3: (1) that the Air Quality and Emissions Monitoring and Management Plan (AQEMMP) developed for the Jay Project be applied at the Ekati mine site first to aid in the evaluation of its effectiveness, and (2) that the GNWT consult LKDFN on the development of the AQEMMP.

Regarding the LKDFN's request that the AQEMMP should be applied and tested at the Ekati site prior to its application at the Jay Project site, the GNWT notes that the existing Ekati AQEMMP is the basis for the AQEMMP that will be applied to the Jay Project. The existing AQEMMP will be expanded spatially to include monitoring the effects of the Jay 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 Jay AQEMMP to the Ekati main site is unnecessary; the measure is worded adequately to address the environmental concerns expressed by LKDFN.

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, during the approvals

process for the AQEMMP, will request input from IEMA in order to ensure that Aboriginal governments' and organizations' concerns, including those of LKDFN, are considered.

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 addressing the feedback received, and finalizing the plan for construction based on feedback received (operations to be addressed prior to the operations phase). LKDFN will therefore have further opportunities to provide input on the AQEMMP.

Impacts to caribou: Measure 6-4

Final dustfall-related concerns expressed by LKDFN focus on Measure 6-4: the requirement for GNWT to develop an interim dustfall objective prior to construction. 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.

Impacts to caribou: Measure 6-5

With respect to the TK Elders group, the LKDFN raised concerns about: the independence of the TK Elders group; the narrow, prescribed scope of the measure; 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 LKDFN around the TK Elders group.

In its letter to GNWT, LKDFN noted the scope of Measure 6-5 was limited and requested TK be incorporated into mine design, construction, operation, and closure. LKDFN 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 LKDFN 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 LKDFN.

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 Measure 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. As a public watchdog and with responsibilities to Aboriginal parties to the Environmental Agreement, IEMA, as directed by Measure 6-5, will receive the report from the TK Elders group. This will function as another mechanism providing assurance that recommendations and advice provided by the TK Elders group is considered by the developer.

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 Plan, 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 the relevant Bathurst caribou 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. 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

The letter from LKDFN voices the serious concerns of the LKDFN with respect to caribou management. In commenting on Measure 6-6, LKDFN states that any future Bathurst Caribou Management Plan should have legally-enforceable thresholds and measures to ensure that development activities are not permitted to continue in the event of a further decline, and that Aboriginal hunting restrictions should be mirrored with restrictions to industrial development. LKDFN elaborates further by requesting that 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 LKDFN 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 LKDFN's recommendations on the content of a future Bathurst caribou management plan

and recognizes LKDFN 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 just that: 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, in which LKDFN is an active participant. 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 for development of the range plan is March 2018.

The Bathurst Caribou Herd Cooperative Advisory Committee is a requirement of the Tłıchǵ 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 LKDFN, are currently reviewing the terms of reference for this group.

Until a long term management plan for the Bathurst caribou herd can be developed, GNWT is working through the co-management processes outlined in the Tłıchǵ Agreement and the NWT *Wildlife Act* to implement interim management actions (2016 to 2019) that will support reversal of the Bathurst caribou herd's decline and promote an increase in the number of breeding females in the herd. On December 15, 2015 the Tłıchǵ Government and 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 caribou 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 EA of the Ekati mine are sufficient to prevent significant adverse impacts to the Bathurst caribou herd from the Jay 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 LKDFN 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 LKDFN that these measures will not address the concerns of the LKDFN as the LKDFN believe Measure 7-1 would restrict the use of TK to issues within the "cultural sphere". Reiterating concerns surrounding Measure 6-5, LKDFN states concerns with the measure being scoped too narrow and delivered by the developer. Finally, LKDFN noted that funding should be provided to LKDFN 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 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.

As stated in the response above to the suggestion by LKDFN regarding Measure 6-5, Measure 7-1 also 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 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 phase for the Project. Similarly Measures 4-2 and 4-3 focus on the prevention of significant impacts to traditional uses of water in the Jay area post-closure and involves the WLWB. Measures 6-1, 6-2, 6-5, and 13-2 also have requirements for the inclusion of TK.

Finally, the Environmental Agreement, Article XI, is devoted to TK. This Article includes a provision for TK studies and requires the developer to incorporate TK into the environmental plans and programs and to give all available TK full consideration as the plans and programs are developed and revised.

Maximizing Benefits and Minimizing Impacts to Communities

The GNWT notes that what the LKDFN have requested with respect to Measure 8-1 is consistent with the wording in the original measure, noting the emphasis the LKDFN have placed on maximizing the positive socio-economic benefits (as opposed to addressing negative socio-economic impacts). The GNWT is pleased to accommodate the LKDFN and commits to discussing social and economic outcomes of resource development with the LKDFN. 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.

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 the Impact Benefit Agreement communities) are available to women, as are the apprenticeship and training programs. While the measure, scholarships, and programs do not address LKDFN's specific request that 'women in management level positions' be included in specific commitments and outcomes, the GNWT notes that the measure does not preclude Dominion from working on strategies to increase the number of women in those positions; the scholarships and programs are available to women, as well as men.

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

The GNWT recognizes the importance of the requests by LKDFN, that Dominion have strategies and initiatives aimed at hiring women into management roles.

While LKDFN'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 LKDFN's asserted or established Aboriginal and Treaty rights.

Impacts to air quality

LKDFN states its ongoing concern regarding the lack of enforceable air quality standards in the NWT. LKDFN also states that the Review Board concluded that the proposed Project emissions will not have an adverse impact on the environment.

The GNWT would like to re-iterate that it committed on the record to having enforceable air quality regulations in place by March 2017. As well, regarding dustfall standards for the Project, 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 Environmental Agreement.

The GNWT would also like to clarify that MVEIRB's determination of no likely significant adverse impacts as a result of Project emissions refers to the Project once mitigative measures are in place. A determination of likely significant adverse impact is required in order for MVEIRB to recommend a measure.

In addition to the above concerns with Measure 9-1, LKDFN requested that MVEIRB's suggestion for continuous inline emission monitoring be included as a measure to prevent a significant adverse impact. The GNWT concurs with the recommendation of the Review Board that significant adverse impacts that might result from incineration are prevented with the stack testing and response framework described in the Report. The GNWT therefore finds that the addition of the suggestion as a measure is unnecessary.

With respect to LKDFN's proposal that the wording of Measure 9-2 include a commitment to adopt technologies and management practices aimed at reducing greenhouse gas (GHG) emissions if those technologies and practices are found to be feasible, the GNWT finds the additional wording to be unreasonable. Dominion

has put considerable efforts to reducing emissions of GHGs, including reporting GHG emissions, setting annual GHG reduction targets, conducting preventative maintenance, using best available technology and economically achievable, alternative ore hauling strategies, and a commitment to investigate alternative energy. The developer has already implemented practices at the existing Ekati site (no idle campaign, composter for organic wastes which reduce the load in the incinerator, changes in the power plant operation, a heat recovery system, auditing insulation and changes in the lighting to a more energy efficient product) which demonstrates their commitment to GHG emission reductions.

The content of Measure 9-2 combined with commitments made by Dominion are sufficient to ensure public concern regarding the emission of GHG and the overall contribution to climate change of the Project is mitigated, and that potential adverse impacts on asserted or established Aboriginal and Treaty rights of the LKDFN are prevented.

EA Measures Follow Up

The GNWT is pleased to see that overall, LKDFN appreciates the inclusions of measures requiring monitoring, follow-up reporting and adaptive management of the other measures included in the Report. The GNWT also recognizes the importance of follow-up reporting and testing of EA predictions.

The recommendation from LKDFN is that Measure 13-1 include reporting to parties of the Jay EA for accountability on the part of Dominion, and oversight by the parties concerning the significance of new impacts and effectiveness of any adaptive management strategies. While not required as part of Measure 13-1, the reporting as to effectiveness of the measures in mitigating impact – the comparison of EA predictions to measurable outcomes of the Project requested by LKDFN - is required under Measure 13-3. The inclusion of additional wording to Measure 13-1 to ensure accountability is therefore unnecessary.

Regarding LKDFN's concern that there is no recourse to ensure the reporting required under Measure 13-4 by governments and regulatory authorities occurs,

the RMs notes that by accepting the recommendation of the Review Board, RMs are required under the MVRMA to carry out a decision made to the extent of their respective authorities and act in conformity with the decision to the extent of their authorities. The GNWT commits to carrying out and acting in conformity with Measure 13-4.

Closing

GNWT would like to take this opportunity to reiterate the importance of other measures and mechanisms in place to prevent likely significant adverse impacts to the environment and accommodate potential adverse impacts to asserted or established Aboriginal and Treaty rights of the LKDFN. The Environmental Agreement is a legal instrument designed to ensure, among other things, signatories to the Agreement respect and protect land, water, wildlife and the land-based way of life essential to the well-being of Aboriginal Peoples. This obligation includes listening to community members' concerns, considering such concerns when making decisions about Ekati, and encouraging the developer to use TK in designing and implementing environmental plans and programs.

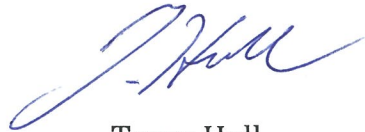
IEMA is established under the Environmental Agreement and is mandated to serve as a public watchdog of the developer and of regulatory processes related to Ekati, including participating in regulatory and other processes and making recommendations on various management plans and response frameworks. The Environmental Agreement requires Dominion to report annually on the results of its environmental monitoring programs, detailing monitoring, mitigation and adaptive management measures. Aboriginal Peoples, as defined in the Environmental Agreement, have the opportunity to review Dominion's reports and advise GNWT whether they consider the reports satisfactory. GNWT encourages the LKDFN to continue its active involvement in IEMA's activities. GNWT is providing a copy of this letter to IEMA for its consideration in carrying out its responsibilities.

The views expressed by the LKDFN in its letter are important and GNWT looks forward to continued LKDFN 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 LKDFN 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,
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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

Marc Casas, Executive Director, Independent Environmental Monitoring
Agency