



Wildlife, Lands and Environment Department

Lutsel K'e Dene First Nation
P.O. Box 28
Lutsel K'e, N.T.
X0E 1A0

Telephone: (867) 370-3197
Fax: (867) 370-3143

September 22nd 2014

Charlotte Henry
Project Assessment Analyst
GNWT – Lands Department
Box 1320
Yellwoknife, NT, X1A2L9
Via email: charlotte_henry@gov.nt.ca

Ms. Henry,

Please accept this letter as comment on the Report of the Environmental Assessment (REA) for DeBeers' Snap Lake Project Water License from the Lutsel K'e Dene First Nation (LKDFN).

The Lands Department of the GNWT requested that we comment on the REA as to determine whether or not our concerns have been addressed in regards to our Aboriginal rights. Though we appreciate that the Measures set out in the report identify with the intent of our suggested Measures, it has come to light that there is a procedural deficiency with the requirement of the company to comply with such Measures; a deficiency that would certainly lead to negative impacts to LKDFN Aboriginal rights, and one that we hope the Lands Department is capable of rectifying. It is true that the Measures will serve to limit the significant impacts of the project, yet without proper follow-up to ensure compliance of these Measures, or penalties for non-compliance, there is still a lingering concern that our Aboriginal rights in that area will be lost.

Recently, in DeBeers second project in the watershed (Gahcho Kue), as well as with Avalon's Nechalacho Project, both proponents have so far failed to comply with the Measures set out after lengthy Mackenzie Valley Environmental Impact Review Board (MVEIRB) reviews. It calls into question whether we conduct these EAs simply to allow parties to feel as if they are contributing, or are they conducted for their intended purpose, to create a project that actually works to limit environmental impact. We understand enforcement of Measures directly under the authority of a certain governing body belong to that department, for example, Measure one requires the Land and Water Board (MVLWB) to set a limit to ensure protection of the ecosystem and aboriginal uses, as well as set a limit that will ensure no mine impact will be detected at

44kms downstream. This is straightforward enough, but we are concerned that Measure 2, requiring DeBeers to incorporate water treatment and mitigation, is outside the MVRMA authority of the MVLWB. The Yellowknives Dene have questioned under who's authority the enforcement of these types of Measures lie, and from GNWT Lands Department's response (Lorraine Seale email dated Sept.15th 2014) "GNWT expects the developer to implement its commitments and encourages the developer to work directly with the Aboriginal parties." A similar response was submitted by CANNOR. If we are to rely on DeBeers to implement this Measure and follow their commitments, we are repeating mistakes of the past, as referenced in ours as well as the Yellowknives submissions to the board, and we are certain we will not see any movement by the company to follow direction of the MVEIRB. So in terms of these Measures, we require the responses to the following questions to determine if our rights will be impacted:

- 1) What is the Department of Lands' understanding of the MVRMA in terms of the MVLWB's authority to require water treatment and mitigation as part of the water license? i.e. Can the MVLWB require DeBeers to implement mitigation technologies to limit TDS in discharge water?
- 2) If not, under whose authority can we rely for the implementation of this Measure?

Measure 1 confirms a commitment from DeBeers from their original EA that their impacts will not be detectable past Mackay Lake at 44kms downstream, so it is appreciated that this is now a Measure and a requirement of the project beyond a company commitment, but LKDFN seeks information as to what is the process, or what happens if water quality changes are in fact detectable beyond 44kms? As we see it, after 1/3 of their mining life, impacts from the mine are already detectable more than half way to that endpoint of 44kms downstream. Logic would suggest that before the end of mine life, barring effective mitigation efforts, which the company seems hesitant to undertake, there will certainly be impacts beyond 44kms. GNWT also states in their closing arguments that it is their opinion that detectable change in the unmitigated scenario could potentially be noticeable up to 155km downstream (25% increase from background, and more than 3 times the Measure limit). So for clarification, if significant impacts are suffered if the mine-related effluent is detectable beyond 44kms downstream, what is triggered if the effluent is detected beyond 44kms, as GNWT suggests could be the case? If we are placing this Measure under the MVLWB's authority, then is it possible that DeBeers could lose their water license because of this failure? The reason we ask is because there was one suggested Measure from the LKDFN that the limits set be hard limits, not to be exceeded, that was not implemented as a final Measure from the Review Board. We all agree now, that significant impacts will be suffered if effluent is detectable beyond 44kms downstream, so hopefully the GNWT and the Boards understand that we are not willing to participate in another WL or EA process where DeBeers seeks to amend that number and allow for impacts beyond 44kms. So as it stands, this is the limit of acceptable change in the ecosystem and it is non-negotiable, so please clarify the process of rectifying the situation if project related effluent is detectable beyond 44kms downstream of Snap Lake.

If the process is such that if this limit is breached and the mine continues to operate unabated, the effluent plume will flow further downstream thus impacting the Aboriginal way of life in that area. We are seeking assurance from the GNWT that this will not be allowed to happen. It goes without saying that there is a lack of trust of this company and this operation, so we are hoping to receive more than company commitments in terms of protected this sacred watershed.

We remained wary of this project's potential impacts and seek further information from the Lands Department as to how you can assure us that our rights won't be impacted. This can be done by stating how enforcement of these Measures will be undertaken, and giving LKDFN the confidence that DeBeers cannot continue to render this waterway questionable for Aboriginal use.

Please direct your response to the undersigned. Thank you for your consideration.

Sincerely,

Original signed by:

Mike Tollis
Wildlife, Lands and Environment Manager
Lutsel K'e Dene First Nation
Lutsel K'e NT
XOE1A0
lkdfnlands@gmail.com
P: 867-370-3197
F: 867-370-3143