

December 20, 2012

Chuck Hubert  
Senior Environmental Assessment Officer  
Mackenzie Valley Environmental Impact Review Board  
Suite 200, 5102 – 50<sup>th</sup> Avenue  
P.O. Box 938  
Yellowknife NT X1A 2N7

Dear Mr. Hubert:

### **Ni Hadi Yati**

The joint presenters of Ni Hadi Yati are please to submit this letter in support of this important initiative for the Gahcho Kue Project (the Project). On Wednesday, December 5, 2012, during the technical portion of the public hearing, the Panel heard an innovative joint presentation from the Akaitcho First Nations, Tłı̨chǫ Government and De Beers regarding a collaborative forum to support the technical capacity of Aboriginal groups so they can better participate in adaptive environmental management for the Project. This forum is called *Ni Hadi Yati* which translates to *Words that Watch the Land or People Watching the Land Together*. The intent of this joint letter is to clarify the purpose and scope of Ni Hadi Yati, and clarify how the forum will work in concert with the existing regulatory regime and mandates of regulators to improve process efficiencies and Aboriginal participation. Ni Hadi Yati will also be a forum to discuss how Traditional Knowledge can be integrated into environmental monitoring programs and management plans, or how Traditional Knowledge can be promoted on its own basis through the Project. Finally, this joint submission provides additional clarification on our expectations of federal and territorial governments in Ni Hadi Yati with respect their participation and technical expertise.

### **Ni Hadi Yati - Purpose**

Ni Hadi Yati is designed to be a forum for participating Aboriginal groups to identify their technical review needs, and access technical review expertise to allow them to more meaningfully understanding and be informed on specific areas of interest that they identify. Areas for technical review will include the adequacy of Project environmental monitoring and management plans developed by De Beers, and the outcomes of the environmental monitoring data that is collected by De Beers in accordance with those plans. With an ongoing technical understanding, the Aboriginal groups will be better able to manage their challenging workloads and keep informed on the Project from a technical perspective. As a result, the Aboriginal groups will be better positioned to provide input on draft plans by using the knowledge gained through technical review to make recommendations to De Beers and the MVLWB on the content of plans and adaptive management options.

Ni Hadi Yati is essentially an engagement mechanism for the life of the Project to be secured through a binding contract between the participating Aboriginal groups and De Beers. It should be viewed as

solidifying a working relationship between these Aboriginal groups and De Beers, as well as contractually requiring that monitoring plans (e.g., Wildlife Monitoring Plan and Air Quality Plan) be collaboratively developed and refined. Ni Hadi Yati is not an independent oversight body or monitoring agency, and does not have an enforcement role. Rather, Ni Hadi Yati plays a key role in insuring that the participating Aboriginal groups have the best available technical information, from a scientific and TK perspective, with which to inform and engage with existing regulatory processes.

What has remained outstanding with past projects is the ability of the participating Aboriginal groups to continue participating in document and data reviews after Environmental Assessment (EA) approvals and permits are granted. Ni Hadi Yati is designed to address this key issue.

Through the implementation of Ni Hadi Yati, the Aboriginal groups will have more direct involvement with De Beers in the evolution of environmental monitoring and management plans. An example with similarities to Ni Hadi Yati has been demonstrated by the Gahcho Kue Project Wildlife Monitoring Plan Working Group that brought technical experts together with Aboriginal group representatives to work on the Wildlife Effects Monitoring Program for the Project. That forum, and working relationship, led to the development of a generally acceptable, albeit with work remaining on outstanding issues, wildlife monitoring plan much earlier in the planning process than previous projects. This is a tangible example of how such a forum can lead to efficiencies and increased understanding for all parties.

It is important to clarify that Ni Hadi Yati is Project-specific and does not have a role with respect to cumulative effects monitoring and management. However, given that a number of the wildlife monitoring plans are regional in scope, Ni Hadi Yati participants are free to recommend to De Beers ways for the Project to contribute to additional cumulative effects initiatives that may be developed by government in the future.

For De Beers, the implementation of Ni Hadi Yati allows for better lines of communication between the company and Aboriginal groups, particularly their lands departments whose staff need to understand the evolving technical aspects of the Project. Working collaboratively going forward, as we have during the development of Ni Hadi Yati, will build trust and lead to more holistic environmental monitoring and management for the Project.

### **Ni Hadi Yati – Function, Roles and Responsibilities**

The Aboriginal groups that participate in Ni Hadi Yati will each select a lands department representative and come together as a group to meet with De Beers to identify technical review needs for the coming year. Technical review needs will be based on areas of interest and monitoring programs running in a given year that are expected to be reported on.

These annual Ni Hadi Yati meetings will also identify preferred experts to carry out the reviews. The Ni Hadi Yati contract will have a dispute resolution mechanism to address issues with respect to work plan development, budget and preferred reviewers. Where possible, based on human resources at the time, expert reviewers will be selected from territorial and federal government departments. Specifically, we are requesting the federal and territorial governments review materials, attend meetings and provide, upon request, a detailed peer review of materials. The goal will be to align the process of Ni Hadi Yati with the responsibilities of the existing regulatory process.

This strategy reduces review costs and duplication as government experts typically review the information in any case to fulfill their mandates. An example is that EC and GNWT generally review the

air quality monitoring data reports for the Project. This was described by Stephen Ellis during the public hearing:

We hope to draw from existing specialists where available to reduce duplication and increase efficiency. It would be unfortunate if De Beers and the parties would have to put their resources on the line to secure, for example, a geochemistry expert when NRCan already has someone whose mandate it is to look after geochemistry issues with regards to Gahcho Kue. So we are hoping that the existing and available technical expertise within the governments can participate in the technical advisory forum. So just some examples there: air quality, GNWT, Environment Canada has some people, very good people. It would be great if they could participate in this endeavour. And additional advisors will be recruited where needed. So there are gaps where the governments don't have expertise that we need. And one of the largest one is TK. So we see De Beers providing the funding for that expertise to be provided to the parties. [Transcript December 5 at page 126]

While the government departments with applicable expertise are not likely to sign the Ni Hadi Yati contract, the view expressed was generally positive on the approach with a willingness to provide the technical reviews being sought by Ni Hadi Yati:

I think you'll look at certain topics like air. The GNWT and Environment Canada, I think, are well recognized by all the groups that we provide very good advice on air in our review. We would continue to review the material that De Beers does, their monitoring reports. If the group needs discussion, we would do that, but not in the sense of sitting down and writing their material. [Gavin More, GNWT Transcript December 7 at page 207]

Based on the conceptual model presented for Ni Hadi Yati at this hearing, Environment Canada is open to considering the possibility of participating as a technical advisor with respect to areas captured under our mandate, which would include the AEMP, the WEMP, sorry about the acronym, it's the wildlife effects monitoring program, air quality monitoring management, and possibly cumulative effects. [Lisa Lowman, EC Transcript December 7 at page 272-273]

The Habitat Management Program of DFO here in the territories has always been available to assist the -- the various monitoring agencies that have been developed, and we've always engaged with them and we always assisted where -- where we could. And I -- I would see that where those - the monitoring programs or reports that the - that any new group would be looking at was relevant to our mandate, we would certainly offer the assistance where we could. [Julie Dahl, DFO Transcript December 7 at page 274].

It is agreed that in the event government experts are not available in a particular area or cannot be selected by consensus for whatever reason, De Beers will fund third party expert consultants to carry

out the reviews. To clarify the word “lend” as stated in the Ni Hadi Yati recommendation #3<sup>1</sup>, this was not intended to mean that government experts would be seconded to Ni Hadi Yati; rather, the intent was that government experts would, where reasonable and appropriate to do so, participate and assist Ni Hadi Yati.

De Beers is responsible for undertaking the applicable environmental monitoring programs at site. De Beers will prepare the monitoring data reports, which will then be provided to the Ni Hadi Yati participants and the technical reviewers with expertise in particular areas pursuant to the workplan or as needed based on circumstances. The technical reviewers would proceed to review the documents (draft monitoring and management plans, or monitoring data reports) and they would provide a summary of their findings and recommendations back to Ni Hadi Yati. The reviewers will be meeting with Ni Hadi Yati to explain the review outcomes, answer questions and discuss recommendations.

The findings of technical reviews would be provided to the Ni Hadi Yati participants for their own consideration. Each Aboriginal group can then use the information as they see fit to support possible recommendations to De Beers or the MVLWB with respect to plans that fall within its scope. When De Beers receives a recommendation for adaptive management from Ni Hadi Yati, or any other party (e.g. government experts following a technical review), De Beers will give full consideration to the request and respond in writing either indicating acceptance of the recommendation or providing a rationale as to why it may not be adopted. Technical reviews provided to Ni Hadi Yati, Aboriginal party correspondence and De Beers responses will be posted to a web site developed by Ni Hadi Yati.

Based on our experience with the wildlife working group, we’re confident that most issues that arise from technical reviews will likely be resolved through open discussion with a path forward being agreed upon. This approach is a key aspect of how Ni Hadi Yati will lead to efficiencies in the regulatory process. With the participants working out issues on an on-going basis, there will be less unresolved matters to deal with during document reviews and permitting processes pursuant to the regulatory process. We understand that this approach is generally encouraged by the Boards.

### **Ni Hadi Yati – Traditional Knowledge**

While a focus of Ni Hadi Yati is on the technical review needs of Aboriginal groups, there is an excellent opportunity to use the forum as a way to bring forward new ideas and suggestions on how best to incorporate Traditional Knowledge into environmental monitoring programs and management plans, or how Traditional Knowledge can be promoted on its own basis through the Project. Dialogue on this topic through the Ni Hadi Yati forum will help De Beers find potentially innovative ways to meet its commitment to incorporate Traditional Knowledge for the life of the Project. To this end, Ni Hadi Yati will seek the expertise of a Traditional Knowledge expert and will strive to hold at least one Ni Hadi Yati meeting per year on the land.

### **Ni Hadi Yati - Alternatives Considered**

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<sup>1</sup> Akaitcho First Nations, Tlicho Government and De Beers joint public hearing presentation on Ni Hadi Yati dated December 5, 2012: The Government of Canada and the Government of the Northwest Territories shall lend available technical resources to the Ni Hadi Yati.

During the public hearing, parties to Ni Hadi Yati were asked the question: What if the parties can't agree on the contract and the Ni Hadi Yati forum doesn't materialize? First, based on our level of collaboration to date, the parties are confident that this important initiative will be realized and the parties have developed a schedule to finalize a contract by March 2013. Although Ni Hadi Yati is the preferred option for all parties, given the questioning from Panel counsel, each participant will provide in final argument their alternative position should the participants not be able to finalize a mutually acceptable contract establishing Ni Hadi Yati by March 31, 2012. We thank the Panel for its hard work and look forward to the final Report on the EIR.

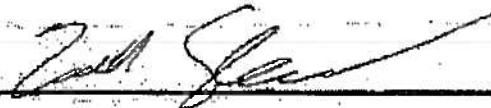
Sincerely,



Deninu Kue First Nation



Tl'cho Government



Lutsel K'e Dene First Nation

Yellowknives Dene First Nation



De Beers Canada Inc.