



**Tłı̨chǫ Government**

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RE: Review Panel for EIR0607-001 [2006]

Mackenzie Valley Environmental Impact Review Board  
200 Scotia Centre  
Box 938, 5102-50th Ave  
Yellowknife, NT X1A 2N7

December 21, 2012

Dear Chuck Hubert:

The Tłı̨chǫ Government submits, under separate cover, our Closing Argument. Please do not hesitate to contact myself or my staff with any questions.

We look forward to reviewing the Board's decision.

Laura Duncan

Tłı̨chǫ Executive Officer



# Closing Argument

## on the proposed Gahcho Kue Diamond Mine

Submitted to the Review Panel for EIR0607-001 [2006]

December 21, 2012



# Introduction

This document contains closing argument for the Tłı̨chǫ Government. This report is organized by the remaining measures that the Tłı̨chǫ Government is seeking.

In the Tłı̨chǫ Government Technical Report, the Tłı̨chǫ Government made recommendations for 14 measures. Many of these requests for measures were resolved through the course of the hearings. Some remain. We reflect, in our closing argument, on the measures that do remain.

The Tłı̨chǫ Government has participated actively through the Environmental Impact Review of the Gahcho Kué diamond mine proposed by De Beers Canada.

The Tłı̨chǫ Government has participated in:

- Review of the Draft and Final Terms of Reference;
- Participation in the EIS Workshop;
- Review of the EIS and Supplemental information;
- Submission of IRs in Round 1 and 2, and then subsequent review of the responses;
- Participation in the Technical Meeting;
- Submission of a Technical Report and review of the De Beers response;
- Participation in Panel hearings;
- Engagement in the ongoing meetings of Ni Hadi Yati (October-December 2012)

# Water

**TG MEASURE 1:** The Tłıchǫ Government continues to request a measure that requires the proponent to consider, in setting the SSWQOs, the traditional use of the Aboriginal people of the region and the levels will be set suitably to **protect** these traditional uses. The Tłıchǫ Government notes that many Traditional Use studies are yet to emerge, but notes that these SSWQOs should be set to the level of use and protection at various endpoints (in Kennady Lake and downstream), and that De Beers commits to protect use (in all the variety of forms set out by AANDC).

## Independent monitoring

The Tłıchǫ Government supports the further development of Ni Hadi Yati, which has been the subject of two in depth meetings since the hearings in December. The Tłıchǫ Government has provided a joint submission giving more clarity on this entity in a separate submission. Please see the joint submission for our thoughts on Ni Hadi Yati. Please note: participation in forming Ni Hadi Yati has been approved through the Chief Executive Council of the Tłıchǫ Government.

It is through Ni Hadi Yati that the Tłıchǫ Government will be evaluating and considering the actions, research and activities of the company, as well as the actions and outcomes achieved through the regulatory authorities. This will not be a duplication of effort.

It is through this body that independent oversight will be achieved.

**TG MEASURE 2:** The Tłıchǫ Government requests a measure that requires the proponent and parties to collaboratively conclude an extra-regulatory agreement, to host Ni Hadi Yati, that brings into being an arms-length oversight body.

**TG MEASURE 3:** The proponent should also be required, through a measure, to develop an enforceable Wildlife Monitoring Plan to be undertaken principally by De Beers. The Tłıchǫ

Government believes that these can be given force through a contractual environmental agreement between the company and the First Nations. There would be a need for dispute resolution.

# Caribou

## *Winter road access and vehicle access*

DeBeers should develop and implement a monitoring program to address the issue of whether the Winter Access Road and associated vehicular traffic affects behavior and/or impedes movement by caribou. Some key considerations are: i) develop a method for detecting a predefined threshold density for caribou in the vicinity of the Winter Access Road, which would trigger a sampling methodology; ii) design the caribou sampling methodology to systematically record behavior of individuals and groups of caribou and their reactions to winter roads and vehicles; iii) pilot the monitoring and sampling program along the Tibbett to Contwoyto winter road corridor to identify and address potential problems in methodology, and establish a comparative baseline; and iv) implement an automated vehicle monitoring system to document volume, timing and characteristics of winter road traffic.

**TG MEASURE 4:** De Beers be subject to a measure to monitor and test whether the Winter Access Road and associated vehicular traffic affects behaviour and/or impedes movement by caribou. The proponent should also be required, through a measure, to develop an enforceable Wildlife Monitoring Plan to be undertaken principally by De Beers. The Tlicho Government believes that these can be given force through a contractual environmental agreement between the company and the First Nations. There would be a need for dispute resolution, in case the parties are at odds.

## *Zone of influence*

The ZOI represented a critical assumption in the proponent's EIS; the proponent should develop and conduct specific monitoring studies to define and estimate the ZOI for the Gahcho Kué mine through its development phases from construction to closure. An important consideration is to estimate the number of caribou that may enter the ZOI.



**TG MEASURE 5:** The Board should require a measure that is specific about the precise definition of the ZOI for the Gahcho Kué mine through its development phases from construction to closure.

*Effects of mine on caribou behavior*

The effect of mine activities on caribou behavior and activity within the ZOI was a key assumption in the proponent's EIS and conclusion on the predicted impacts and energetic consequences to caribou. The proponent should design and implement robust monitoring designs to estimate impacts to behavior and activity of caribou that enter the ZOI.

One consideration is that paired monitoring of appropriate environmental co-variables, such as a site-specific insect harassment index are important design component, which will allow overall effects on caribou behavior to be attributed to mine activity and disturbance, versus variability in natural environmental factors.

**TG MEASURE 6:** The Board should require a measure for specific estimations of impacts to behavior and activity of caribou that enter the ZOI.

*Regular & comprehensive analyses of monitoring programs*

The final recommendation to the Board is to use follow-up monitoring for the life of the Gahcho Kué Project to implement an integrated approach for improving project-specific and cumulative effects assessments.

Some specific suggestions are to conduct a comprehensive analysis and review of all data from the Gahcho Kué monitoring programs every 5 years. The 5-year evaluation should include a comprehensive site-specific assessment of effects mitigation and monitoring, as well as contributing to an updated cumulative effects assessment of all industrial activities and developments on the range of the Bathurst herd.

**TG MEASURE 7:** The Board might issue a measure that requires the creation of an ongoing trans-boundary cumulative effects monitoring program over the range of the Bathurst Caribou herd. The cumulative effects update and review should be done collaboratively to:

- advance the 'state-of-the-art' in assessment methodologies,
- test and update critical assumptions,
- contribute to a regional cumulative effects monitoring approach, and
- incorporate a review of range-wide industrial development activities relative to recovery and health of the Bathurst herd.

This regular review and assessment should be conducted so that it specifically contributes to and is consistent with the ongoing caribou management efforts including (but not limited to) the GNWT-ENR barren-ground caribou management strategy, Aboriginal Affairs and Northern Development Canada's (AANDC) NWT Cumulative Impact Monitoring Program (CIMP) and the current initiative to develop a comprehensive management proposal for the Bathurst caribou herd as outlined in section 12.11 of the T Agreement.

This final recommendation is a request to the Board to consider piloting an innovative approach that respects and builds upon existing territorial and federal government mandates, and Bathurst caribou management initiatives with the objective of linking project-specific EIAs and associated monitoring programs in to a broader long-term monitoring program that may be undertaken at the geographic scale of a herd's annual range. An example of a long-term northern ecosystem-scale monitoring program is the Southeast Alaska Network (Sergeant et al. 2012. *Journal of Applied Ecology*. 49: 969–973).