



February 21, 2022

Chair Joanne Deneron
Mackenzie Valley Environmental Impact Review Board
PO BOX 938, 5102-50th AVENUE
YELLOWKNIFE NT X1A 2N7

by EMAIL

Dear Joanne Deneron:

Outstanding Issues – Arctic Canadian Diamond Company’s Ekati Mine - Point Lake Project – Mackenzie Valley Review Board MVRMA Ss.126(3) determination

The Government of the Northwest Territories has not identified a legal requirement to maintain water licence conditions reflecting the Jay Project measures.

Thank you for your letter dated December 17, 2021, which outlined the Mackenzie Valley Environmental Impact Review Board’s (Review Board) concerns regarding outstanding procedural and practical questions regarding the implementation of the Jay Environmental Assessment (EA) measures. As you stated, the recommendation made by the Review Board in the Report of Environmental Assessment and Reasons for Decision (REA) for the Jay EA was approved by the Minister of Lands, on behalf of all responsible ministers.

After the approval of the Jay Project, the implementation of the measures in the REA was required and began when construction of the road to the Jay deposit commenced. Limited work was done to advance the Jay Project and in July 2021 Arctic Canadian Diamond Company (Arctic) proposed that the Jay Project be removed from the Ekati Water Licence. This request led to your questions on the ability to remove measures from regulatory authorizations and the need to implement measures in the REA. The Government of the Northwest Territories (GNWT) understand that both the Wek’èezhìi Land and Water Board (WLWB) and the Review Board believe there is no provision in the *Mackenzie Valley Resource Management Act* (MVRMA) to vacate or remove the Jay Project measures.

Officials from the GNWT have been in conversation with officials from Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC) to discuss the Review Board’s view that without a new Ministerial decision under s. 130 of the MVRMA, there is no clear path in the legislation that allows 1) a regulatory authority to remove conditions that are required to implement Environmental Assessment measures from a water licence or other regulatory instrument, or 2) for a government department or agency to avoid its legal obligation to implement a measure which is within the scope of its authorities.

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The GNWT takes the position that the current situation (i.e., whether the implementation of measures from the Jay REA should be applied to the Point Lake Project) is not comparable to the Snap Lake decision referenced in the Review Board's letter (that Measure 10 in the Snap Lake REA could not be modified through a water licence proceeding). In the instance of Snap Lake, the proponent wanted a change in the water licence that would, de facto, have been inconsistent with a measure. The alteration was proposed for the same project that the measure applied to. For the Point Lake Project, Arctic would like to see measures related to the Jay Project, a completely separate project, removed from the water licence conditions that apply to the Ekati site as a whole. As stated previously, the Jay measures were for that project and the GNWT believes that those measures continue to apply only to the extent that certain aspects of the Jay Project were constructed and those activities that will continue. Put another way, the GNWT believes that the measures from the REA for the Jay Project do not apply to any aspect of the Point Lake Project unless the aspect was also part of the Jay Project and has already been constructed.

Regarding the authority of the WLWB, the GNWT believes the WLWB can opt to maintain any of the conditions it included in the Ekati Water Licence to incorporate measures and commitments from the REA for the Jay Project if those conditions apply to the Point Lake Project, or the WLWB can decide to remove any such conditions that are unrelated to the limited parts of the Jay Project that were constructed. As the Jay Project has been cancelled¹, there is no longer a legal requirement to maintain water licence conditions reflecting those Jay Project measures. There is also no legal requirement, or mechanism, to apply measures from the Jay Project to the Point Lake Project in the water licence or any context. This is consistent with the GNWT's position in the September 24, 2021 letter to the Review Board – that in the GNWT's opinion, the request to cancel the Jay Project by Arctic means that the Jay Project (with the exception of the initial components already constructed) is defunct. That said, the GNWT reaffirms the commitments in its September 24 letter that mitigations contained in Jay measures directed to the GNWT which have been adopted to apply sitewide at the Ekati mine will continue via their respective sitewide mechanisms.

Development Certificates

The GNWT recognizes that the development certificate provisions from the amendments to the MVRMA have not yet been called into force. The GNWT also understand that the Government of Canada is continuing to work towards bringing the development certificates into force and supports those efforts, provided there is sufficient lead time to plan for effective implementation of the provisions.

¹ Arctic Canadian Diamond Company's May 27, 2021, application to the Wek'èezhii Land and Water Board stated that "it is clear to Arctic that the Jay project is uneconomic as permitted, and as such, the project will either not be pursued or will be rescoped and re-permitted."

Regional Strategic Environmental Assessments

The GNWT notes the discussion of Regional Strategic Environmental Assessments (RSEAs) in the December 15, 2021, letter to CIRNAC. The GNWT will actively participate in any discussions about potential RSEAs in the Mackenzie Valley.

The GNWT trusts that you will find this information useful. Please feel free to contact Lorraine Seale, Director, Securities and Project Assessment, at lorraine.seale@gov.nt.ca if you have further questions.

Sincerely,



Jamie Koe
Deputy Minister
Lands

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