

Reasons for Decision

Decision date: October 18, 2021	File: Ss. 126(3) Determination
Subject: Arctic Canadian Diamond Company's: Ekati Mine – Point Lake Project – MVRMA Ss. 126(3) Determination	

1 Summary of Decision

On October 18, 2021, the Mackenzie Valley Environmental Impact Review Board (Review Board) decided not to order an environmental assessment (EA) of Arctic Canadian Diamond Company's (Arctic) proposed Point Lake Project on its own motion, under subsection 126(3) of the Mackenzie Valley Resource Management Act (MVRMA).

This decision was based on the evidence available to the Board, which indicates the potential impacts of the Point Lake Project can be reliably mitigated by the combination of:

1. measures from the [2016 Report of Environmental Assessment and Reasons for Decision on the Dominion Diamond Jay Project \(EA1314-01\)](#), that would apply to the Point Lake Project. Some of which are already implemented site wide, being implemented or adapted to the Point Lake Project;
2. Arctic's commitment to the Wek'èezhìi Land and Water Board's (WLWB) not to build the approved Jay Diamond Project;
3. Arctic's and the Government of the Northwest Territories' (GNWT) recent commitments in response to Review Board information requests; and,
4. the likely resulting mitigation from the public regulatory proceeding of the WLWB that is currently underway.

In making this decision, the Review Board considered the WLWB preliminary screening decision for the Point Lake Project, responses to the Review Board's information requests from both Arctic and GNWT Department of Lands, other relevant information available on the public record for both the WLWB and the Review Board, and the related issues from the Review Board's Ekati Jay Project (Jay) environmental assessment. The evidence and Board's reasons are outlined in more detail below.



2 Background

In May of 2021, Arctic applied to the WLWB to amend its Type A water licence and applied for two new land use permits for the proposed Point Lake Project.¹ This project is located between the location of the proposed and previously assessed Jay Pit and the already constructed Jay access road, at the southern end of the Ekati Mine site. Arctic describes the Point Lake Project as a “bridge” between current operations and future mining operations which will require several years for design and construction.²

The Point Lake Pit is a “satellite open pit” and is also near the existing Misery Pit. Prior to open pit construction, Point Lake would be fished out and dewatered. Pit construction would require a short access road, a 49 ha footprint waste rock storage area and a 24 ha footprint overburden stockpile. These facilities would be located on the west side of Lac du Sauvage in an area identified by parties to the Jay EA and the Review Board in its Jay Project Report of EA as an important corridor for barren-ground caribou, notably Bathurst Caribou migration.

If the Jay Project was carried out, the Point Lake Project would interact with the already assessed, approved, permitted, and licensed Jay Project. For example, the proposed Point Lake waste rock storage area and overburden dump would be close to the location of the proposed Jay waste rock storage area. The Jay Road, which is already built, will be used to access the Point Lake Project. Arctic has heard from parties during its own engagement and during the WLWB preliminary screening process that the two projects in combination will likely cause impacts on the ability of caribou to migrate through the important caribou migratory movement corridor identified during the Jay EA, and cause other potential cumulative effects.

In response, Arctic is proposing that the entire Jay Project be removed from the Water Licence and applicable land use permits. It believes that by removing the Jay Project “there is no risk of concurrent activities or post-closure cumulative effects”.³ Arctic stated that if the Jay Project is proposed again in the future, it will be developed in a method and design that would be substantially different than that was previously assessed and would be subject to Part 5 of the MVRMA. Implications of this request to remove the Jay Project will be discussed in more detail later in this decision.

¹ [Point Lake Project Description](#)

² [Arctic Diamonds May 27, 2021 letter](#) to Chair of WLWB, p. 1.

³ [Arctic’s letter to the WLWB on July 29, 2021](#) (PDF p. 9 and p. 101)

3 Preliminary Screening Overview

The WLWB met on August 24, 2021 and considered the new land use permit applications and the water licence amendment application from Arctic for Land Use Permits W2021X0004 and W2021D0005 and Water Licence W2020L2- 0004 (formerly W2012L2-0001) for the Point Lake Project, in accordance with the MVRMA. The WLWB conducted a preliminary screening based on the public record for the regulatory proceeding to that point. Based on the evidence available, under section 125 of the MVRMA, the WLWB considered the specific changes to the Ekati Mine resulting from the Point Lake Project if it were to be developed. The WLWB decided not to refer the project to environmental assessment because, in its opinion, the Point Lake Project changes will not have a significant adverse impact on the environment or be a cause of public concern.

The WLWB [Reasons for Decision](#) noted that Arctic has committed to eliminate the Jay Project as a potential contributor to direct impacts and cumulative effects, especially on caribou. The WLWB concluded that if the Jay Project is no longer authorized through land use permits and a water licence, then the Jay Project as assessed in EA1314-01 is no longer reasonably foreseeable. Due to the Jay Road already being constructed and Arctic's proposal to use it for the Point Lake Project, the WLWB determined that road-related impacts and some relevant measures from the Jay EA will continue to apply to the Point Lake Project. For those reasons, cumulative effects from the Point Lake Project, a much smaller development than the Jay Project, will be mitigated and will not be significant. The WLWB Reasons for Decision stated that if the Jay Project is proposed again in the future, it will be subject to Part 5 of the MVRMA.

4 Outstanding procedural issues identified in the preliminary screening decision

In its preliminary screening decision, the WLWB stated that it was uncertain what impact the commitment by Arctic to not proceed with the Jay Project would have on the implementation of the measures from the Jay Project environmental assessment, recommended by the Review Board and adopted by the Minister and responsible ministers. *The Report of Environmental Assessment and Reasons for Decision for the Jay Project* resulted in 22 measures (Jay Project measures) that, by law, must be implemented by the appropriate regulatory authority or by the



relevant government department or agency to the extent of their respective authorities. The Review Board agrees with WLWB's position that "there is no provision in the MVRMA to vacate or remove these [Jay Project] Measures."

In this regard, the MVRMA contains no amendment process relating to measures. In the Review Board's view, without a new Ministerial decision under s. 130 of the MVRMA, there is no clear path in the legislation that allows for:

- a regulatory authority to remove conditions that are intended to implement measures from a water licence or other regulatory instrument, or
- for a government department or agency to not carry out the requirement of a measure to the extent of its authorities.

This position is informed by the responses from Aboriginal Affairs and Northern Development Canada (now Crown Indigenous Relations and Northern Affairs Canada) to the Mackenzie Valley Land and Water Board (MVLWB) in 2013 when that department considered questions about the ability of the MVLWB to disregard or amend measures from an environmental assessment and adopted by the Minister of Aboriginal Affairs and Northern Development Canada and the responsible ministers.⁴

The Review Board believes that this procedural issue is still outstanding and should be addressed before the approval of any amendments to remove any conditions from any regulatory permit or licence required to implement measures from the Jay EA. The GNWT and its relevant departments should consider their continuing responsibilities to carry out the decision to adopt the recommendations of the Review Board in the Jay Report of EA to extent of their respective authorities as per ss. 130(5) of the MVRMA.

The Review Board strongly endorses the WLWB's observation that the amendment provisions of the MVRMA (enacted in 2014 but not yet in force), related to the requirement for development certificates, could have been a very helpful tool to evaluate and make changes to, or omit measures of, a previously assessed development.

⁴ Letter from Aboriginal Affairs and Northern Development Canada to MVLWB of [November 5, 2013](#) and [December 16, 2013](#)

The Review Board will correspond with the relevant government and Indigenous parties to request further information regarding the outstanding procedural issues outlined above.

5 Jay Project measures and their application to the Point Lake Project

The preliminary screening decision and other related materials on the WLWB public registry indicate that many of the potential impacts identified for the Point Lake Project are similar to those determined to be significant for the Jay Project. Due to the similarity of impacts and the proximity of the two projects, the Review Board believed that it would be helpful to understand how Jay Project measures might be applied, in full or in part, to the Point Lake Project.

Much of the information about how Jay Project measures were implemented or applied, and their relevance to mitigation of potential significant impacts of the Point Lake Project, was set out in several different documents or responses to comments during the online review for the preliminary screening. Accordingly, there is no one document containing all this relevant information. The Review Board recognizes that some of the likely significant impacts from the Jay Project and certain resulting measures may not be applicable to the Point Lake Project, such as those related to the construction of the Jay Project dike.

To assist the Review Board in better understanding the potential mitigation of potential significant adverse impacts of the Point Lake Project, and to help make its MVRMA subsection 126(3) decision for the Point Lake Project, the Review Board requested that Arctic answer the following information requests:

1. Which Jay Project measures are already implemented and how?
2. Which Jay Project measures will Arctic commit to maintain or adapt for the Point Lake Project and how?
3. Which Jay Project measures does Arctic consider not to be required to mitigate the potential impacts of the Point Lake Project and why?
4. Are there any new and relevant mitigations that have not already been proposed?

A similar letter was sent to the GNWT Department of Lands with the following information requests relevant to measures from the Jay EA required to be implemented by the GNWT:

1. Which Jay Project measures are already implemented and how?
2. Which Jay Project measures will GNWT maintain or adapt for the Point Lake Project and how?
3. Which Jay Project measures does GNWT consider to not be required to mitigate the potential impacts of the Point Lake Project and why?

The Review Board received the responses from [Arctic Diamonds](#) and [GNWT-Lands](#) on September 24, 2021. This information was necessary for the Review Board to understand whether the potential residual impacts of the Point Lake Project would be significant even with the application of Jay Project Measures, in full or in part.

6 The Review Board applied the “might” test

In considering whether to refer the Point Lake Project to EA, the Review Board considered the test to determine whether a project should be referred for an EA, as set out under subsection 125(1) of the MVRMA. Subsection 125(1) states that if a proposed development “might have a significant adverse impact on the environment or might be a cause of public concern,” the preliminary screener shall “...refer the proposal to the Review Board for an environmental assessment.” “Impact on the environment” is defined in s.111 of the MVRMA as: “any effect on land, water, air or any other component of the environment, as well as on wildlife harvesting, and includes any effect on the social and cultural environment or on heritage resources.”

The Review Board provides guidance on how to apply the “might test” in its *Environmental Impact Assessment Guidelines*. The “might test” is applied independently to determine if a development proposal:

- might have a significant adverse impact on the environment; or,
- might be a cause of public concern.

If either of these tests are met, a development must be referred to the Review Board for an environmental assessment.

In this case, the Review Board applied the same test as the prescribed legal standard for preliminary screening determinations. This test is appropriate since a Review Board subsection



126(3) referral to EA has the same result as a screening referral under subsection 125(1) - that the proposed development would undergo an EA.

In making this decision, the Review Board considered the potential impacts of the Point Lake Project, in light of all the relevant evidence and significance determinations for the Jay Project EA.

7 Without mitigation the Point Lake Project might cause significant impacts

The Review Board has considered that the Point Lake Project might cause significant adverse impacts or public concern based on:

- the potential for the Point Lake Project to contribute to existing *cumulative* impacts on barren-ground caribou, socio-economics, and Indigenous culture. These pre-existing cumulative impacts are already significant in the Point Lake area.⁵
- The potential of the Point Lake Project to cause *project-specific* impacts on caribou, water, fish and fish habitat and cultural impacts.

Due to its proximity to the Jay Project, the Point Lake Project has certain characteristics in common with the Jay Project. Aspects of the Jay Project EA are instructive and relevant to the Point Lake Project because the Jay Project EA focussed on:

- certain similar project components (such as road construction, overburden pile, waste rock piles and industrial traffic)
- the same vicinity (same road, same ecological setting, same esker, same general area within in the mine site)
- similar valued components (such as caribou, water quality, socio-economic and cultural issues)
- concerns of many of the same parties, including Deninu Kų́é First Nation, the Tłı̄cho Government, the North Slave Metis Alliance, Environment and Climate Change Canada, the Department of Fisheries and Oceans Canada, the GNWT, and the Wek'èezhii Renewable Resources Board.

⁵ See pages 72 and 73 of the (2021) [Diavik EA](#) and pages 113, 156-158 and 169 of the [Jay Report of EA](#) for details on these pre-existing significant cumulative effects.



Additionally, access to Point Lake Project relies on the Jay access road that was constructed for the Jay Project. This road was a major source of concern in the Jay EA that resulted in measures to minimize impacts from barriers to movement and sensory disturbance to caribou.

Based on these similarities, it was reasonable for the Review Board to consider whether the Point Lake Project has a similar potential to cause impacts on caribou, water, fish, and fish habitat, as well as to contribute to social and cultural cumulative impacts.

The Review Board recognizes particular concern among Indigenous communities about the catastrophic decline of the Bathurst caribou herd since the time of the original approval of the Ekati Mine. In the Jay Project Report of EA, the Review Board observed that this decline remains an ongoing cause of hardship among communities that relied on caribou as a traditionally harvested species and important food source.⁶ It found that cumulative effects of diamond mining on caribou were significant even without the proposed Jay Project (p 113).

In the same Report of EA, it provided its reasons why any additional cumulative impact on the herd in its current vulnerable state is unacceptable. The Review Board stated (p 114) that “given the high vulnerability of the herd, even small additional stresses on caribou matter”. The well-being of Indigenous peoples and their ability to exercise their traditional right to harvest caribou are at risk. This remains a grave concern for communities and for the Review Board, particularly due to the worsening state of the Bathurst caribou herd since the time of the Jay EA decision.

Similarly, new diamond projects might contribute to the already significant socio-economic and cultural cumulative impacts that communities are experiencing from diamond mining. The Point Lake Project might add to these existing significant cumulative effects. Indigenous cultural use of the Lac de Gras area has also been affected. These social-economic and cultural impacts were identified by the Review Board in the Jay Project EA and Diavik EA.⁷

Numerous project-specific water and fish issues were identified for the Jay Project, including loss of fish habitat, changing water levels and management of wastewater. These can further

⁶ Page 110 of the [Jay Report of EA](#) provides evidence from Indigenous parties describes how the reduced caribou harvest contributes of cumulative impacts on Indigenous well-being. There has been no increase in the caribou harvest since that time.

⁷ See pages 153-161 and pages 166-170 in the [Jay Report of EA](#).

reduce traditional land users' confidence that the water is clean and safe enough for cultural uses. These potential impacts were considered by the Review Board for the proposed Point Lake Project as well.

8 Potential cumulative impacts of Point Lake Project are mitigated

The Review Board has considered the potential cumulative effects from the Point Lake Project, and concludes that these will be mitigated partly by the developer's commitments on the public record and partly by legally required measures from environmental assessments of other projects.

Cumulative impacts are addressed partly because, as part of the Point Lake Project, **Arctic has committed to not build the Jay Project** for which it already has regulatory approvals. Arctic is proposing to build *less*. The Point Lake Project is smaller than the Jay Project would have been. It also has a shorter duration of three to four years, compared to the ten year-plus lifespan of the Jay Project. The Review Board agrees with the WLWB that the total cumulative effects without the Jay Project but with the much smaller Point Lake Project are likely less than they would have been had the Jay Project been fully developed.

The potential cumulative effects from the Point Lake Project are adequately mitigated by the measures from the Jay Project that have been applied to Ekati as a whole, measures that Arctic has committed to adapting to the Point Lake Project, and other proposed mitigations. These measures addressed the contributions of the Jay Project to existing cumulative effects that were already significant. These measures are approved and legally required. Although these mitigations were intended to mitigate cumulative impacts of the Jay Project, they also can mitigate cumulative impacts from the Point Lake Project. They include measures to:

1. minimize significant cumulative impacts on caribou, to reduce impacts to caribou throughout the entire Ekati mine site, beyond the areas of the Jay and Point Lake Projects. These measures require:
 - reduced disturbances from roads, trucking and dust throughout the Ekati mine site;
 - faster reclamation of caribou habitat elsewhere on the site (such as the Long Lake Containment Facility);
 - more involvement of Elders to achieve better use of Traditional Knowledge for managing caribou impacts sitewide; and,



- completion of a caribou management plan for the Bathurst herd by the GNWT.⁸
2. minimize significant cumulative social impacts from diamond mining on communities, by requiring the GNWT to:
- better engage diamond mining communities, to regularly discuss with communities the priority social issues related to the effects of diamond mining, at the individual, family and community level, and the effectiveness of GNWT programs to address these;⁹
 - identify the significant cumulative adverse social effects of diamond mining on NWT communities; and,
 - better address these issues using adaptive management processes to measure and respond to adverse health and well-being impacts.

Measure 6 from the Diavik (EA1819-01) Report of EA includes mitigation of impacts from other diamond mining projects. This supports Suggestion 2 (page 91) of the Jay Report of EA, which suggests that the GNWT support long-term community-based monitoring of the cultural well-being indicators to inform adaptive management. Suggestion 1, on the same page, suggests that the GNWT should coordinate Measure 6 from the Diavik EA, dealing with cultural well-being, with Measure 8-1 from the Jay Project EA, dealing with socio-economic well-being. Measure 6 was required to mitigate cumulative cultural impacts from diamond mining projects on communities. It requires the GNWT to engage and work with communities to:

- monitor and adaptively manage adverse cumulative impacts on cultural well-being;
- develop community-specific cultural well-being indicators, to use when monitoring and evaluating cumulative cultural well-being impacts; and
- engage with communities to prioritize cumulative cultural impacts and discuss improvements to existing GNWT programs to mitigate them.¹⁰

⁸ See Measures 6-2, 6-3, 6-4, 6-5 and 6-6 on pages 127-137 of the [Jay Report of EA](#). Measure 6-1, which was originally specific to the Jay Project, is also being applied to mitigate impacts of roads on caribou throughout the mine site, which therefore also mitigates cumulative effects.

⁹ See Measure 8-1 from the [Jay Report of EA](#), pages 175-177.

¹⁰ See Measure 6 from the (2020) [Diavik Report of EA](#), pages 89-90, and [GNWT Sept. 27, 2021 letter](#) to the Fort Resolution Metis Government (in response to WLWB Technical Session Information Request # 47).



The Review Board does not expect these measures will fully mitigate the cumulative impacts of all future diamond projects. However, with these mitigations in place, the Point Lake Project will likely not contribute to the significant cumulative impacts identified in the Jay and Diavik Report of EAs.

The Review Board expects that Arctic will keep its commitments, including the commitment not to develop the Jay Project as previously assessed. Where appropriate, the Review Board suggests that the GNWT and the WLWB consider maintaining or adding conditions or requirements of permits, licences or management plans that implement commitments made by Arctic. The Review Board will also carefully consider the need for an environmental assessment to understand the potential for significant cumulative (and project impacts) from any proposal to develop the Jay deposit in the future.

To better understand the cumulative impacts of any future development proposal in this area, the Review Board strongly supports the initiation of a regional strategic environment assessment of the Slave Geological Province area of the NWT. The benefits of a “Regional Study” of this type is described in the Review Board’s 2020 Perspectives Paper.¹¹

9 Potential project-specific impacts from the Point Lake Project are mitigated

The Review Board has considered whether the potential project-specific effects from the Point Lake Project might be a cause of significant adverse impacts or public concern. It accepts that these potential impacts will be mitigated by:

- the Jay Project EA measures applied to or adapted to the Point Lake Project;
- existing or updated management plans;
- the developer’s and GNWT’s recent commitments in response to Board information requests and in the WLWB public record; and
- the results of the public regulatory proceeding of the WLWB that is currently underway.

The Review Board has tracked the implementation of the applicable measures for the Jay Project that would deal with the project-specific potential impacts of Point Lake Project on

¹¹ [Evolving Environmental Assessments in the Mackenzie Valley and Beyond: Perspective Paper](#), see Pages 19-21



water, fish, caribou, and people. It is satisfied that even though the measures were required for the Jay Project, which Arctic has committed not to complete, many relevant measures from the Jay Project EA are already implemented, will be implemented, or be adapted for the Point Lake Project. These are robust measures, designed for a larger and longer project with more impact.

10 The Review Board is satisfied that the relevant Jay Project measures can mitigate similar impacts from the much smaller Point Lake Project that also has a shorter project life

The Review Board notes there are several characteristics of the Point Lake Project that suggest its impacts will be much less than those from the Jay Project. Unlike the Jay Project, the Point Lake Project:

- has no works in Lac du Sauvage, a large and culturally significant lake;
- involves dewatering a lake that is over hundred times smaller (<1 km² vs 109 km²);
- involves much less wastewater to manage;
- is not directly upstream of the Narrows, a major cultural site;
- has no dike construction;
- involves less haulage distance; and
- has a shorter duration of three to four years, compared to the Jay Project's ten or more years.

These differences between the projects lead the Review Board to conclude that the applicable measures from the Jay Project EA will mitigate smaller potential impacts from the Point Lake Project. These relate to impacts on caribou, impacts on water, cultural impacts, socio-economic impacts and impacts on fish and fish habitat. Some of the Review Board's considerations for each of these are summarized below.¹²

Regarding caribou, measures to mitigate impacts have already been implemented site wide, or will be adapted for the Point Lake Project, as follows:

- Measure 6-1 requires truck convoys and better traffic management, real-time caribou collar satellite information as a trigger for action levels for management responses, caribou crossing features on 70 percent of Jay Road, a Caribou Road Mitigation Plan

¹² The measures referred to in this section refer to measures in the [Jay Project Report of EA](#).



prepared as part of WMMP, and Traditional Knowledge used in many aspects of project design and monitoring;

- Measure 6-2a requires caribou offsets and a mitigation plan, including caribou ramps and dust suppression;
- Measure 6-2b requires the GNWT research and design successful offset projects;
- Measure 6-3 requires an air quality plan to reduce dustfall, and Measure 6-4 requires the GNWT to develop dustfall standards to reduce sensory disturbance to caribou;
- Measure 6-5 created a Traditional Knowledge Elders group for TK-based caribou monitoring and mitigation;
- Measure 6-6 required the GNWT to complete a caribou management plan.

During the Point Lake regulatory process, the developer has also committed to:

- flattening portions of the Jay Road that were not originally constructed as caribou crossings near where Jay infrastructure would have been built, so that caribou can move through the area more easily;
- constructing the Point Lake waste rock and overburden pile in a way that enables caribou movement after the Point Lake Project is complete; and
- not proceeding with the Jay Project (as described above).

Regarding cultural impacts, the most sensitive cultural site identified in the Jay Project EA was the Narrows, downstream of the proposed in-lake workings in Lac du Sauvage. The Narrows will not be substantially affected by the Point Lake Project, so the related cultural impacts that were previously predicted are no longer expected. However, Indigenous parties to the Point Lake Project regulatory process will still experience the cultural benefits from:

- Measure 7-1, which requires a Traditional Knowledge Management Framework;
- Measure 7-2, which required an on-the-land cultural camp; and
- Measure 6-5 requires a TK Elders group, and recommends mitigations that reduce cultural impacts.

Although some of these measures address cumulative impacts, they also mitigate project-specific cultural impacts of the Point Lake Project.



With respect to social impacts, the measures dealing with cumulative impacts described above will also reduce project-specific impacts from the Point Lake Project:

- Measure 8-1 requires the GNWT to engage with communities and adaptively manage social impacts from diamond mining, and
- Measure 8-2 requires Dominion to update its strategy to train, recruit and employ women, particularly in non-traditional trades and occupations, after consulting with appropriate Territorial women’s groups. The GNWT has recently re-committed to fulfilling the requirements of Measure 8-1 on the WLWB public record for the Point Lake Project.¹³

With respect to water management, most of the measures in Jay are not applicable, as the Point Lake Project does not require construction of a dike, and the proposed Point Lake pit is much smaller and will require much less dewatering for construction and operations. Much less water will be drawn from Lac du Sauvage for pit refilling at closure for the Point Lake project than was anticipated for the Jay Project. In addition, the Point Lake Project will not:

- intersect the deep salty connate water that the Jay Project would have needed to manage;
- use the Misery pit for mine water; and
- rely on the success of the physical process of meromixis for mine waste containment and isolation.

In this way, the Point Lake Project avoids most of the water issues identified in the Jay Project EA. The water quality objectives and site water management plan required by Jay Project measures will be adapted for the Point Lake Project and carried forward through the water licensing process.¹⁴

Remaining water management issues for the Point Lake Project are being thoroughly dealt with in the current regulatory process of the WLWB. This has included technical sessions and will provide further opportunity for public review and hearings in November. The WLWB process is focussing on how:

¹³ See GNWT Sept. 27, 2021 [response to Information Request # 47](#).

¹⁴ Measures 4-1 and 4-2(a) of the Jay Report of EA



- lake water containing elevated sediment will go to a secure settlement facility during initial lake dewatering;
- waste rock seepage and open pit mine water will go to an established mine water management facility;
- water will be monitoring, data evaluated, and results reported; and,
- contingency situations will be managed.

One issue that remains outside of the scope of issues considered for the Jay Project EA is the potential for acid generating rock. Because of the WLWB's expertise in this particular area of water management and its depth of experience with Ekati context, in combination with the thorough participatory public process now underway, and based on the Review Board's observations of that process to date, the Review Board is confident that water management issues for the Point Lake Project are being dealt with adequately.

With respect to impacts to fish and fish habitat, the Review Board do not expect the Point Lake Project to pose the challenges of Jay Project. Water levels at the Narrows between Lac du Sauvage and Lac de Gras will likely not be significantly affected by pit refilling at closure. Point Lake is a headwater lake that is less than 1% the size of Lac du Sauvage. No rare fish species or unique or limited fish habitat have been identified there. Standard fish habitat mitigations and compensation, as required by the Department of Fisheries and Oceans, are expected to be adequate.

11 Conclusion and Next Steps

The Review Board has decided not to exercise its discretion under subsection 126(3) of the MVRMA and will not order an environmental assessment of Arctic Canadian Diamond Company's proposed Point Lake Project on its own motion.

This decision was made because the evidence available to the Board indicates the potential impacts of the Point Lake Project will be reliably mitigated by the combination of:

- Jay measures already implemented (or being implemented or adapted) that would apply to the Point Lake Project;
- Arctic's commitment to the WLWB not to build the approved Jay Diamond Project;



- Arctic's and GNWT's recent commitments in response to Review Board information requests; and,
- the likely resulting mitigation from the public regulatory proceeding of the WLWB that is currently underway.

This decision was made under a unique scenario. The Review Board will seriously consider the potential for any future project of similar scale and scope of development to cause significant adverse impacts. Such a project may warrant an environmental assessment. In the case of the proposed Point Lake Project, the Review Board and others have the benefit of relying on the recently completed environmental assessment and the mitigation that resulted from that EA, along with the proposed project specific mitigation and additional commitments made throughout the regulatory proceedings. In this case, these factors have contributed greatly to the final decision of the Review Board on these matters.

As mentioned above, the Review Board will be corresponding soon with the relevant government and Indigenous parties to ask for further information to help address the outstanding procedural issues outlined above.

ON BEHALF OF THE MACKENZIE VALLEY ENVIRONMENTAL IMPACT REVIEW BOARD:



Joanne Deneron
Chair

