

Correia, Samantha

From: Nasso, Mélissa on behalf of Beaudoin, Serge
Sent: Monday, February 28, 2022 8:58 AM
To: jdeneron@reviewboard.ca
Cc: Jamie_Koe@gov.nt.ca; Erin_Kelly@gov.nt.ca; rfequet@wlwb.ca
Subject: Your correspondence regarding request for clarification from the Mackenzie Valley Environmental Impact Review Board - Ekati Point Lake Project

Attachments: RESPONSE LETTER TO MVEIRB.docx

Dear Ms. Deneron:

Thank you for your correspondence of December 15, 2021, regarding the outstanding procedural issues for Arctic Canadian Diamond Company's (Arctic) Ekati Mine - Point Lake Project and the Mackenzie Valley Impact Review Board's (Board) subsection 126(3) determination, as well as the topics of the implementation of development certificates and regional studies (notably for the Slave Geological Province) under the *Mackenzie Valley Resource Management Act* (the Act). I will address each of these in turn below.

Ekati Mine - Point Lake Project Procedural issues

The department appreciate the Board's review of the Wek'eezhii Land and Water Board's (WLWB) preliminary screening decision and acknowledge the Board's decision to not refer the project to environmental assessment. In response to the legal and procedural issues noted in the Board's reasons for decision and subsequent letter, we recognize the challenge facing the Boards in this particular case. Please note that my officials have been in conversation with officials from the Government of the Northwest Territories, to discuss the Review Board's questions.

The Point Lake Project is separate and distinct from the Jay Project

Despite the relationship between the proposed Point Lake Project and the approved Jay Project, including their location and use of the Jay Road, the projects remain distinct and are both subject to the Act. The Point Lake Project was screened, not referred to environmental assessment, and is the subject of a current coordinated licensing and permitting proceeding. Any proposed change to the Jay Project, such as the developer's desire to amend authorizations to remove Jay Project components and activities, must be dealt with separately and in accordance with the Act.

In order to remove those components and activities of the Jay Project that will no longer be carried out (e.g., construction of the dyke and mining of the Jay pit), Arctic may apply to amend the applicable water licenses and land use permits authorizing the Jay Project. This amendment process should be separate and distinct from the Point Lake licensing and permitting proceeding that is ongoing.

Applicability of the Jay Project measures

In your letter, the Board questioned whether conditions that implement approved measures from the Jay Project environmental assessment can be removed without a section 130 decision under the Act. The Board cites the example of the Snap Lake Water License Amendment Project, which was referred to an environmental assessment in order to address unexpected impacts of the previously assessed Snap Lake Mine Project. We share the view that a new decision by the Minister under section 130 of the Act would be required to amend the Jay Project measures. However, the current procedural issue is not analogous to the Snap Lake example as it relates to components and activities of the Jay Project that will not be carried out.

The Snap Lake Water License Amendment environmental assessment was necessary in order to re-assess environmental effects of the Snap Lake mine in light of unexpected mine impacts on effluent quality. The assessment found that an increase in total dissolved solids would have significant adverse environmental impacts, and that additional measures were required to mitigate these effects. As is typical for a proposed project change where additional impacts are expected – or in the case of Snap Lake where unexpected impacts were occurring – an amendment application must be screened and may be referred to an environmental assessment. In the case of the Jay Project, cancelling or abandoning major project components would not result in additional environmental impacts.

We agree, however, that a project change which affects approved measures in a report of environmental assessment does require assessment. And while amending the Jay Project authorizations to reflect such a major project change (i.e., not proceeding with some project components and activities) is still subject to Part 5 of the Act, the evidence on the record^[1] will come to bear in the event of any future assessment^[2] of a Jay Project change.

Development Certificates Coming into Force

The department appreciate and understand the Board's concern and interest in development certificates coming into force without further delay in the Mackenzie Valley. There has been and will continue to be ongoing work towards bringing development certificate provisions into force. The department is committed to advancing this item and officials will be reaching out the Board, along with the territorial and Indigenous governments, to discuss next steps in the near future.

Regional Strategic Environmental Assessment of the Slave Geological Province

The department acknowledge the Board and Tł'chǫ Government's support for initiating a Strategic Regional Environmental Assessment in the Slave Geological Province. The benefits of such a study, both in light of potential new resource development and infrastructure projects and as a means of considering the already significant cumulative effects of development in the region, are clear. Our department has used these types of initiatives in other regions to gain a holistic and multidimensional understanding of potential adverse effects and opportunities, in a way that reflects the complexity and variety of issues related to future resource development, as well as other possible ongoing activities.

We also believe that this type of assessment needs to be guided by the values and perspectives of the organizations and people who live in the Mackenzie Valley, and that their knowledge can help bring a greater understanding of cumulative effects and inform resource development and management, caribou conservation, and traditional and modern community harvest and cultural activities. To this end, my officials have been in discussion with various interested parties in the region. These conversations are continuing. We understand the Board, in the short term, is able to lead some initial work to bring interested parties together to begin answering questions that will facilitate a Ministerial decision about initiating a study under Part 5.2 of the Act. This is much appreciated by the Northern Affairs team, who look forward to working with the Board and other partners to move such a study forward.

Thanks again for contacting me and I look forward to continued discussions on these important matters. Please feel free to contact the Manager of Environmental Assessment, Land Use Planning and Conservation, Kim Pawley, at kim.pawley@rcaanc-cirnac.gc.ca if you have any additional questions.

Sincerely,



Serge Beaudoin, B.Sc., LL.L
Assistant Deputy Minister
Northern Affairs Organization

[1] The Point Lake Preliminary Screening record, and the record for the Jay Project (EA1314-01).

[2] See subsection 115(2) of the MVRMA.