

April 22, 2022

The Honourable Dan Vandal
Minister of Northern Affairs
25 EDDY ST, 7TH FLOOR
Gatineau, QC
K1A 0H4

Dear Minister Vandal,

RE: Point Lake Project –Development Certificates, Regional Strategic EA for Slave Geological Province

On October 18, 2021, the Mackenzie Valley Environmental Impact Review Board (Review Board) decided not to exercise its discretion under subsection 126(3) of the *Mackenzie Valley Resource Management Act* (MVRMA) to order an environmental assessment (EA) of Arctic Canadian Diamond Company’s (Arctic) proposed Point Lake Project at the Ekati Diamond Mine.¹ The Review Board’s reasons set out the full rationale for this decision.

In making this decision, however, the Review Board identified outstanding legal and procedural issues that in its opinion required further clarification. To address these concerns, the Review Board corresponded with your Assistant Deputy Minister on December 15, 2021,² and

1. requested clarification on the relationship between the Jay Project EA and the Point Lake Project and the appropriate process for vacating measures approved by Ministers in the Jay Project EA;
2. described difficulties created by the delay in implementation of MVRMA Development Certificate Provisions; and
3. emphasized the need for Regional Strategic Assessment for the Slave Geological Province– considering cumulative effects that are already significant regarding caribou, cultural and socio-economic conditions.

The Review Board forwarded similar correspondence to the GNWT Department of Lands.³ The Review Board received a response to its letter from your department on February 28, 2022 and from GNWT on February 21, 2022.

¹ [Reasons for Decision – MVEIRB s.s126\(3\) Determination – Point Lake Project](#)

² [MVEIRB Letter to CIRNAC on outstanding legal and procedural concerns – Point Lake Project – Dec. 15, 2021](#)

³ [MVEIRB Letter to GNWT on outstanding legal and procedural concerns – Point Lake Project – December 17, 2021](#)

CIRNAC Responses

Process to amend or remove measures of an EA approved under a s. 130 Ministerial Decision

The Review Board appreciates the response from CIRNAC staff in its letter of February 28th.⁴ In reviewing this response, the Review Board agrees that the Point Lake Project should be treated as separate and distinct from the Jay Project from a regulatory perspective and that any process to amend or remove regulatory conditions implementing Jay measures which are not applicable to the Point Lake Project should take place separately following the completion of the Point Lake licensing and permitting process.

The Review Board also agrees with CIRNAC's response that a project change that affects an approved measure from a report of EA would currently require an EA under Part 5 of the MVRMA and a subsequent s. 130 Ministerial decision.

Development Certificates

The treatment of the Point Lake Project under parts 3 and 5 of the MVRMA would have been much simpler, and the process more certain, if a development certificate had been in place to implement Jay Project measures. In 2014, the MVRMA was amended as part of legislation necessary for devolution of the administration of lands, resources, and water rights to the GNWT. Among the changes made to the MVRMA in the *NWT Devolution Act* were provisions for enforceable development certificates. The development certificate provisions have not yet been called into force.⁵

These new provisions allow for the issuance, administration, enforcement, and amendment of development certificates. A development certificate will set out the final approved measures that a developer must comply with as it builds, operates and closes its development.

The ability to amend development certificates will allow the Review Board the flexibility to review and adjust EA measures during the life of a project. This means that a significant change to the circumstances related to the development, surrounding circumstances, or a proposal to

⁴ [CIRNAC response letter to MVEIRB request for clarification on outstanding procedural issues – Feb.28, 2022](#)

⁵ Bill C-88, An Act to amend the Mackenzie Valley Resource Management Act and the Canada Petroleum Resources Act and to make consequential amendments to other Acts, reintroduced many of the provisions that were introduced in the NWT Devolution Act, including the provisions related to development certificates. Bill C-88 received Royal Assent on June 21, 2019.

use new technology or change mitigation strategies could be addressed most efficiently by a development certificate amendment process rather than by a new EA.

The Review Board would like to reiterate its strong support for the implementation of the MVRMA amendments which would establish the requirement for development certificates.⁶ Similar systems are already in place in Nunavut and Yukon. In the absence of development certificate provisions, the preliminary screening and regulatory processes for the Point Lake Project were more complicated, uncertain and time consuming, and required more resources and cost for all parties involved. We note that the renewal of the water licence for the Ekati mine is required in the near future and suggest that similar issues may arise in that proceeding. It would be in the interests of all parties to have this development certificate system in place before that proceeding begins.

The Review Board appreciates the commitment, in the response from CIRNAC, to the Review Board's letter, to address this issue. We suggest that a firm date is needed for the coming in to force of certificates provisions. This will help avoid uncertain or complicated procedural and regulatory scenarios, such as those experienced with the Point Lake Project. The Review Board is of the strong opinion that the coming in to force of these provisions is overdue, as they were originally intended to come in to force by April 2016.

Already Significant Caribou, Socio-economic and Cultural Cumulative Effects and the need for a Regional Strategic Environmental Assessment

In its ss. 126(3) decision on the Point Lake Project, the Review Board outlines the concerns expressed by several Indigenous Parties and other parties related to the catastrophic decline of the Bathurst caribou herd since the time of the original approval of the Ekati Mine. This decline has continued since the approval of the Jay Project. This concern is shared by the Review Board.

During the recent public hearing for the Point Lake Water Licence and land use permit by the Wek'èezhì Land and Water Board, the interventions and questioning from parties devoted a considerable amount of time to caribou and other wildlife concerns, matters largely beyond the jurisdiction of that Board. These concerns should be addressed in a forum where Indigenous concerns about wildlife harvesting could be reflected in outcomes that ensured accommodation and reconciliation. We suggest these concerns would have been better and more effectively addressed through a development certificate amendment process, had one been in place.

⁶ Amendments to the MVRMA not currently in force to implement the requirement for or amendments to development certificates – s.117.1, s. 131.3, s.137.4 and s. 142.21

The Panel in the Gahcho Kué Environmental Impact Review, and the Review Board in the Fortune NICO Mine and Jay Project EAs, determined that these projects on the Bathurst Caribou range are further contributing to already significant cumulative effects on this herd.⁷ These findings and the Measures resulting from them have been approved by both federal and territorial Ministers. The Review Board is thus confronted with significant challenges in its efforts to assess or mitigate potentially significant cumulative effects during project assessments, particularly to the Bathurst Caribou herd and the resulting effects on communities that depend caribou for maintaining their culture, traditional rights to harvest, and food security.

As a result of the challenges in conducting comprehensive cumulative effects assessment during these project related proceedings, the Review Board suggests you give the Tłı̨chǫ Government's June 7, 2021, request for the initiation of a "regional study" or regional strategic environmental assessment (RSEA) of the Slave Geological Province serious consideration. Such an assessment is provided for through Part 5.2 of the MVRMA. Cumulative impacts assessment requires a more regional, collaborative, and comprehensive approach to better inform future decisions by all parties than can be achieved through project assessment.

Additionally, a RSEA of the Slave Geological Province would inform and contribute to more efficient future environmental assessment and regulatory processes for prospective resource and infrastructure developments. It would provide greater process certainty to industry, governments, First Nations and co-management bodies, particularly in areas without completed land use planning processes. A RSEA could also inform future management of the Bathurst caribou herd to better protect and conserve the herd, and also protect Indigenous harvesting rights.

As was indicated in the CIRNAC response letter, the Review Board is willing to facilitate a workshop with relevant parties and with CIRNAC staff to discuss what a potential RSEA in the Slave Geological Province might look like. Such a step could assist you in making a decision about the appropriateness of such a study. The Review Board believes that it has the expertise, resources, and ability to coordinate such an initiative based on precedents from the Nunavut Impact Review Board's coordination of the Strategic Environmental Assessment in Baffin Bay and Davis Strait. We look forward to further discussion with departmental staff and other interested parties on the potential for a RSEA of the Slave Geological Province.

⁷ [EIR 00607-001 – DeBeers Gahcho Kué Diamond Mine](#), [EA0809-004 - Fortune Minerals NICO Mine](#), and [EA1314-01 Ekati Jay Project](#)

Conclusion

The Review Board is looking to CIRNAC for the timely coming in to force of the provisions to implement development certificates under the MVRMA. We believe this step will prevent future projects from being subject to an unnecessarily complex, costly, inefficient, and uncertain process to amend or change developments conditions following environmental assessment processes in the Mackenzie Valley.

The Review Board staff are available to advance the discussion of these matters.

Please feel free for you or your staff to contact the Executive Director of the Review Board, Mark Cliffe-Phillips, at mcliffephillips@reviewboard.ca or at 867-766-7055.

Respectfully,

A handwritten signature in black ink, appearing to read 'Joanne Deneron'.

Joanne Deneron
Chair
Mackenzie Valley Review Board

Copied to:

Grand Chief Ken Kyikavichik – Gwich'in Tribal Council

Grand Chief Jackson Lafferty – Tłı̨chǫ Government

Charles McNeely – Chairperson – Sahtu Secretariat Incorporated

Shane Thompson – Minister, GNWT-Lands and GNWT-Environment and Natural Resources

Joanna Ankersmit - Director General, Natural Resources and Environment Branch, Northern Affairs Canada