

September 6, 2021

Lorraine Seale
Director, Securities and Project Assessment
Department of Lands, Government of the Northwest Territories
Box 1320
4923- 52 Street
Yellowknife NT X1A 2L9

Distributed by Email

Dear Ms. Seale:

Re: MVRMA S.126(3) Decision – Point Lake Project – Request for further Information

The Mackenzie Valley Environmental Impact Review Board (the Review Board) received the Wek'èzhìi Land and Water Board's (WLWB) [Preliminary Screening Decision](#) for Arctic Canadian Diamond Company's (Arctic) proposed Point Lake Project. The Review Board is reviewing the Preliminary Screening Decision and other relevant materials to decide if it will exercise its authority to conduct an environmental assessment under subsection 126(3) of the *Mackenzie Valley Resource Management Act* (MVRMA).¹ The Review Board has identified outstanding issues and information gaps that it believes need to be addressed prior to making its decision.

[Outstanding Procedural Issues Identified in the Preliminary Screening Decision](#)

During the preliminary screening review and other public engagements conducted by Arctic, parties identified their concerns about the potential for significant cumulative effects from the Point Lake Project in combination with the Jay Project, assuming both projects would be developed. However, Arctic's [letter](#) to the WLWB on July 29, 2021 indicated that it would not move ahead with any further development of the Jay project. Additionally, Arctic proposed that the "Jay Project be removed from the Water Licence in its entirety." Arctic also stated that if the Jay Project is proposed to move forward 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.

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 recommended by the Review Board and adopted by the Minister and

¹ Notwithstanding any determination on a preliminary screening, the Review Board may conduct an environmental assessment of a proposal for a development on its own motion.

responsible ministers at the completion of the environmental assessment of the Jay Project.^{2,3} The [Report of EA 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 authorities.⁴ 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. 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 intended to implement measures from a water licence or other regulatory instrument, or 2) for a government department or agency to not carry out the requirement of a measure to the extent of its authorities. It is the Review Board's view that to remove the conditions of the Water Licence, as proposed by Arctic, would require an environmental assessment process of some type to remove or amend the Jay Project Measures.

The Review Board agrees with the WLWB that the amendment provisions of the MVRMA that are 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.

[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 the same or similar to those determined to be significant for the Jay Project. Due to the similarity of impacts and the proximity between the two projects, the Review Board believes that it would be helpful to understand how Jay Project Measures might be applied in full or in part to the Point Lake Project. This information is necessary for the Review Board to understand the potential for residual significant impacts of the Point Lake Project even with the application of Jay Project Measures in full or in part. It will also greatly assist the Review Board with its subsection 126(3) determination.

In its review of the required annual reporting submitted to the Review Board by both Arctic (and its predecessor) and the GNWT for the Jay Project, the Review Board notes that some Jay

² The Minister for this decision was the GNWT Minister of Lands

³ EA1314-01

⁴ See ss.130(5) of the MVRMA

Project Measures have been implemented fully or in part for the entire Ekati Mine site.⁵ The Review Board also notes that Arctic has committed to implementing or adapting some Jay Project Measures for the Point Lake Project. The Review Board acknowledges 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.

Much of the information about how Jay Project Measures were implemented or applied, and how they might be relevant to mitigate potential significant impacts of the Point Lake Project, is set out in various documents or responses to comments during the online review for the preliminary screening. 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, the Review Board is requesting that the GNWT answer the following questions related to Jay Project Measures which the GNWT is responsible to carry out to the extent of its authorities:

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

The response to this information request might be best provided in a table format. **We are requesting that GNWT provide its response to the Review Board by September 24, 2021.**

The Review Board is aware that Technical Sessions for the Point Lake Project are being hosted by the WLWB later this week. These sessions will be a good opportunity to discuss with parties already engaged in the regulatory process how Jay Project Measures can be applied or adapted most effectively to the Point Lake Project, as well as to evaluate which Jay Project Measures may not be required.

Please note that the Review Board will be sending similar correspondence to Arctic Canadian Diamonds Company requesting its input on how Jay Project Measures that it is responsible for implementing or undertaking can be applied to the Point Lake Project.

The Review Board is aware of the importance of timely decisions and is committed to making its decision on this matter as soon as possible after it has received adequate responses to the requested information. If the Review Board determines that an environmental assessment is

⁵ Measures 13-3 and 13-4 of the Jay Report of Environmental Assessment required annual reporting from the developer and relevant Government and Regulatory Authorities

required, it believes that it would be a focused and expeditious process, considering its ability to rely on the Jay Environmental Assessment.

Early-works Permit

The Review Board notes that Arctic has applied for an “Early-works” permit for the Point Lake Project. As the Review Board is still in the process of making its MVRMA subsection 126(3) determination, we will be requesting that the WLWB not issue the Early-works permit until after the Board has made its decision public.

Please feel free to contact Mark Cliffe-Phillips at mcliffephillips@reviewboard.ca or 867-766-7055 if you have any questions or would like to discuss this matter further.

Respectfully,



JoAnne Deneron
Chair

Cc. Sheila Chernys – Head, Health, Safety, Security, Environment & Communities Arctic
Canadian Diamonds Company
Joseph Mackenzie – Chair, Wek’èezhìi Land and Water Board
Kim Pawley – Manager, Environmental Assessment, Land Use Planning and Conservation,
Crown-Indigenous Relations and Northern Affairs Canada.
Tammy Steinwand – Director, Culture and Lands Protection - Tłı̨chǫ Government