

# ***NORTH SLAVE MÉTIS ALLIANCE***

***PO Box 2301 Yellowknife, NT X1A 2P7***



February 7, 2020

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Dear Ms. Rozestraten:

## **Re: NSMA Outstanding Concerns and Potential Impacts following the Mackenzie Valley Review Board recommendations for Diavik EA1819-01**

Diavik Diamond Mines Inc (“DDMI”) submitted an amendment request to Water Licence (#WL2015L2-0001) on June 1, 2018, to the Wekeezhii Land and Water Board. The primary purpose of this request was to allow the option of placing processed kimberlite (“PK”) material from the process plant into the mine workings. On February 26, 2019, on its own motion, Mackenzie Valley Environmental Impact Review Board (“Review Board”) referred DDMI’s proposed changes to an Environmental Assessment (“EA”). The North Slave Metis Alliance (“NSMA”) participated as intervener in the Review Board’s EA for this Project, including through scoping sessions, review of scoping documents, responses to Intervention Requests, and during the September 2019 Public Hearing.

In early January 2020, the Mackenzie Valley Review Board submitted its Report of Environmental Assessment and Reasons for Decision (“REA”) and stated that the Project would result in significant adverse impacts on the environment, including water, fish, wildlife, and cultural use of the area.

On January 6<sup>th</sup>, the Government of the Northwest Territories (GNWT) and the Government of Canada (Canada) contacted the NSMA, seeking further details on the potential impacts of Diavik EA1819-01. Both governments requested response to the following questions:

- 1. Are there any specific activities or components of the Project, which, after considering the recommended measures, DDMI’s commitments, and other content in the REA you may identify as having the potential to adversely affect your asserted Aboriginal rights?*

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2. *If so, please specific in a response letter the nature of any and all outstanding concerns regarding potential adverse impacts, and which asserted Aboriginal rights you see as being potentially affected including any concerns you raised at any point previously in the EA that remain outstanding in your view; and,*
3. *Please specify what additional steps you would recommend to address the potential adverse impact.*

Please accept this submission as NSMA's response to the above-listed questions.

We thank the GNWT and the Federal Government in seeking further details and recommendations from the NSMA in regards to the Project as well as the Review Board's decision.

Sincerely,

A handwritten signature in black ink, appearing to read "Marc Whitford". The signature is fluid and cursive.

Marc Whitford  
Vice President



## **ABORIGINAL CONSULTATION ON THE REPORT OF ENVIRONMENTAL ASSESSMENT FOR DIAVIK DIAMOND MINES INC.'S KIMBERLITE DEPOSIT PROPOSAL [EA1819-01]**

North Slave Metis Alliance Submission

### **Section 1: Anticipated Outstanding Impacts to Aboriginal Rights**

In 1999, the NSMA completed a companion document to the Comprehensive Study Report on the Diavik Diamonds Project, titled *"Can't Live Without Work"*. It detailed the NSMA's history and culture; its relationship and role in the North Slave region; the perceived environmental, social, economic, and culture impacts of the then-proposed Diavik Mine; and recommendations on how to ensure the mine did not infringe on Aboriginal rights. This report is now over twenty years old, but despite this, most of it remains accurate and applicable to EA1819-01 ("The Project"). The NSMA will use this report to frame its recommendation to the Government of the Northwest Territories ("GNWT") and to the Government of Canada ("Canada") on potential outstanding impacts to aboriginal rights and cultural use of the Lac de Gras area.

"We don't want to end up with another situation like with Giant here." (Adrian D'hont, *"Can't Live Without Work"*, 1999)

The NSMA believes the Mackenzie Valley Review Board successfully summarized members' key concerns and priorities for the Project in the Report of Environmental Assessment (Jan 2020), notably:

- Updated water quality thresholds and objectives;
- Updated and detailed water quality modelling;
- Community-based monitoring; and,
- Further engagement.

We agree with the Review Board's view that acceptability changes in the Lac de Gras area is low, and that there will likely be reduced cultural use of the Lac de Gras area. With that in mind, the NSMA believes that some activities of the Project will still have the potential to adversely affect members' Aboriginal rights.



## **Section 2: Recommended additional steps to address potential adverse impacts**

### **Recommendation 1: Environmental monitoring should be done with full involvement and consent of NSMA and other affected Aboriginal groups**

This recommendation was first proposed through NSMA's "*Can't Live Without Work*" (1999) report, then critiquing the Comprehensive Study Report on the Diavik Diamonds Project. This recommendation remains applicable to this process, over twenty years later.

As was stated during the Diavik Public Hearing (September 2019) and in closing arguments, NSMA members prioritize the environment and are of the opinion that they should be participants in the assessment of the Diavik site. This includes monitoring of the pit lakes, the land on the Diavik site and surrounding it, and all the environmental parameters relating to it. That being said, NSMA supports the Review Board's Measure 2 of the REA, to ensure collaboration with Indigenous groups on development of water quality criteria and long-term monitoring of these criteria, built on the backbone of Traditional Knowledge.

### **Recommendation 2: Aboriginal rights include the option for future cultural use of the land and engagement is necessary for this review**

The NSMA expects further engagement with Diavik to review in detail the cultural and social significance of the Lac de Gras area to members. It is also crucial to discuss members' vision for future land use of the area. As Fred LeMouel best summarized it: "Maybe again some Aboriginal people will want to be out in that area again in the future, so that's why it's very important to protect it as much as we can" ("*Can't Live Without Work*", 1999).

Therefore, NSMA strongly supports Measure 6 as detailed in the REA, with some additions (see Recommendation 3), notably in identifying and developing community-specific cultural well-being indicators with the GNWT.

### **Recommendation 3: Aboriginal groups should input on independent review panel recommendations**

Measure 4 of the REA should include a process for affected Aboriginal groups to provide input and response to the independent review panel recommendations. Aboriginal input on panel selection will build trust in a fair and unbiased review of the updated modelling for water quality. However, this is not enough. Affected Aboriginal groups such as the

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NSMA should have clear and direct venues for input on the panel's recommendations. Ideally, this feedback should be directly between members and the panel. Strong relationships are required between all parties involved in the Diavik EA process in order for members to confidently know water quality modelling is being shaped under indigenous priorities and concerns. Members have the right to be directly engaged, and most importantly, compensated for their recommendations, review, and knowledge.

In sum, NSMA recommends that under Measure 4, the GNWT and Canada ensure that the regulatory process include input and review from membership on the independent review panel's recommendations, and that under Measure 5 Diavik fund this engagement between the panel and NSMA.

## **Recommendation 4: Water quality modelling updating should include post-reconnection to Lac de Gras**

NSMA supports the Review Board's recommendation under Measure 3 for water quality modelling be periodically updated, according to the following timeline:

- Before depositing the processed kimberlite into the pit(s) and underground;
- Before filling the pit(s) with water from Lac de Gras; and,
- Before reconnecting (partially or fully) the pit lake(s) containing processed kimberlite to Lac de Gras.

To complete the full assessment of applicability of water quality models, a fourth update should be included: after reconnection of the pit lake(s) containing processed kimberlite to Lac de Gras. NSMA believes that pairing modelling of the pit lake water quality with the physical monitoring through the AEMP and requested community-based monitoring programs will ensure that any unforeseen adverse effects are identified early for proper adaptive management measures.

Aboriginal parties, including NSMA, were clear during the Diavik EA Public Hearing that their rights are to clean water, a safe environment, and continued cultural use of the Lac de Gras area. As the Review Board stated in their report, "the preliminary nature of Diavik's water quality modelling contributes to uncertainty about impacts, and feeds into the lack of confidence that Indigenous people feel about the future cultural use of the area" (REA, Chapter 6).

## **Recommendation 5: GNWT and Canada should ensure additional socio-economic opportunities for affected Aboriginal groups as economic reconciliation**

"The clean-up and how to restore it. That's job creation too. I don't know for how long, but there could be some clean-up work that would create jobs as well as make sure that

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things were restored back to as close as possible to what it was" (Anonymous NSMA member, *"Can't Live Without Work"*, 1999).

NSMA continues to prioritize the partnership of the mining industry and its members. As is evident in the above quote, NSMA has held and continues to hold the expectation that Diavik to include hiring Indigenous workers, throughout the duration of the life of the mine. Free, prior and informed consent does not solely lie in the realm of engagement; NSMA expects its members to be at the forefront of:

- Shaping the water quality criteria;
- Developing and implementing long-term monitoring of the pit lake(s), including water quality, fish health and movements, wildlife monitoring around the pits, and water quality monitoring in Lac de Gras at the outflow from the dike(s);
- Identifying experienced panel members for an independent review panel of the updated water quality modelling;
- Transportation of materials off-site (for e.g., NSMA has subsidiary companies for trucking and transportation).

Building relationships and applying reconciliation involves addressing socio-economic opportunities for affected Aboriginal groups, not simply engagement and consultation. As was stated during NSMA's Intervener presentation at the Public Hearing (September 2019), having indigenous people working on site will build trust and confidence in the Project and ensure the end result more closely reflects the desires of the local community. Also, a large proportion of our membership have extensive experience in the either (or both) the mining industry and in environmental sciences and monitoring. Engagement and contracting with and of Aboriginal groups does not need to be a fulfillment of a regulatory board or government's ruling; NSMA believes Diavik (and in turn, the GNWT and Canada) would greatly benefit from members' experience and knowledge in monitoring process and northern contracting, not just in traditional knowledge input.



## **Section 3: Summary of Recommendations & Conclusion**

In response to the GNWT's and Canada's request for further input on any unaddressed potential adverse impacts of Diavik's proposal to store processed kimberlite in pits and underground on the North Slave Metis Alliance's Aboriginal rights, the NSMA has the following recommendations:

- **Recommendation 1: Environmental monitoring should be done with full involvement and consent of NSMA and other affected Aboriginal groups**
- **Recommendation 2: Aboriginal rights include the option for future cultural use of the land and engagement is necessary for this review**
- **Recommendation 3: Aboriginal groups should input on independent review panel recommendations**
- **Recommendation 4: Water quality modelling updating should include post-reconnection to Lac de Gras**
- **Recommendation 5: GNWT and Canada should ensure additional socio-economic opportunities for affected Aboriginal groups as economic reconciliation**

Our priorities are and continue to be safety for people, wildlife, and the environment. The NSMA appreciates the opportunity to provide further input to this process.