

JUN 04 2020

By Email

President Lloyd Cardinal
Fort Resolution Métis Government
P.O. BOX 137
FORT RESOLUTION NT X0E 0M0

Dear President Cardinal:

Responsible Ministers' Decision to Adopt the Recommendation of the Mackenzie Valley Environmental Impact Review Board and Allow the Diavik Diamond Mines Inc.'s Kimberlite Deposition Proposal to Resume the Regulatory Process

The responsible ministers from the Government of the Northwest Territories (GNWT) and the Government of Canada (Canada) have recently concluded the decision phase for the environmental assessment of Diavik Diamond Mines Inc.'s (Diavik) proposal to store processed kimberlite in pits and underground (the Project). Their decision was to approve the Project subject to the implementation of six measures and the commitments from Diavik.

Previous communication with the Fort Resolution Métis Government

On February 19, 2019, the Mackenzie Valley Environmental Impact Review Board (Review Board) referred the Project to environmental assessment. The GNWT and Canada wrote to the Fort Resolution Métis Government (FRMG) on March 15, 2019 to advise you of potential government decisions relating to this Project. The letter also noted that both governments would be relying on the Review Board's process to assist in fulfilling Aboriginal consultation requirements in relation to the Project. Both governments also encouraged the FRMG to participate in the Review Board's process.

Responsible ministers also wrote to FRMG after the Review Board released its recommendation. In concluding its environmental assessment process, the Review Board released its *Report of Environmental Assessment and Reasons for Decision* (REA) on January 6, 2020. The GNWT and Canada wrote to you at that time to continue dialogue regarding potential responsible ministers' decisions relating to the Review Board's findings in the REA. Responsible ministers also asked the FRMG if the REA addressed concerns as they relate to potential adverse Project impacts on your members' asserted Aboriginal rights.

Consideration of concerns raised by Indigenous governments and organizations

In making the decision to adopt the Review Board's recommendation, responsible ministers considered comments made by Indigenous governments and organizations (IGOs). This included what responsible ministers heard from the FRMG during the environmental assessment and after the REA was issued. Your letter of February 27, 2020 identified that additional conditions and measures should be required to protect FRMG's asserted Aboriginal rights. How responsible ministers considered the points in your letter is outlined below.

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Impacts to Bathurst caribou

Responsible ministers appreciate FRMG's concern about the Bathurst caribou herd and acknowledge that the survival of the herd is unknown. However, responsible ministers agree with the Review Board's assessment "that the Project is not likely to make this problem worse" for Bathurst caribou. As the pathway of effects for caribou is through water and the measures will mitigate potential water quality effects, the responsible ministers believe these mitigations are suitably protective and no additional conditions are required. Responsible ministers encourage FRMG to continue to engage with Diavik, specifically with respect to Measure 5 (more effective engagement), as this measure may provide the opportunity for Diavik and FRMG to further explore FRMG's two recommended caribou conditions.

Support for the development of Measure 2 criteria

Responsible ministers recognize FRMG's funding limitations and the desire to be assured that there will be funding and support for FRMG to fully participate in Measure 2. However, responsible ministers understand the current wording of Measure 2 to mean that Diavik must work collaboratively with IGOs and support involvement of communities represented by Indigenous interveners', including FRMG, to satisfy the measure and so an amendment to this measure is not necessary.

Future engagement requirements

The Review Board agreed with IGOs that Diavik's engagement was not adequate, which is why the Board developed Measure 5. This measure requires Diavik to conduct additional and more effective engagement with potentially affected Indigenous communities. Within this measure, Diavik must satisfy multiple objectives and must follow through with appropriate annual reporting by way of an updated engagement plan. The engagement plan includes an engagement log component that tracks all stakeholder interactions, including IGOs. The components of Measure 5 directly address FRMG's recommended condition that Diavik show evidence that it is working with IGOs; therefore, responsible ministers believe FRMG's concern is reasonably mitigated and measure amendments are not necessary.

Funding for limited FRMG capacity

Responsible ministers acknowledge the resource limitations of IGOs to actively participate in regulatory processes. As a means of alleviating some of the financial challenges, FRMG is eligible to apply for the GNWT's Interim Resource Management Assistance program, which could be used by FRMG to participate in the regulatory review of the Project, should FRMG's application be approved. While there are limited funds available through this program, certain measures from the REA also state and/or imply that Diavik will offer support to IGOs to satisfy aspects of measures. The responsible ministers believe that this support and the updated engagement plan (Measure 5 requires Diavik to conduct additional and more effective engagement) should ensure that FRMG is able to meaningfully participate in the management of the Project.

Based on the analysis above, responsible ministers respectfully believe the duty to consult and accommodate the FRMG for the purposes of EA1819-01 has been fulfilled.

Next steps for Diavik's Project

Responsible ministers emphasize that consultation and accommodation with respect to your asserted Aboriginal rights do not end with the responsible ministers' decision on the environmental assessment of the Project. The Project will now resume the regulatory process and any other post-environmental assessment processes. These processes will include opportunities for IGOs to offer input on authorizations and management plans and help ensure that potential adverse impacts to Aboriginal and Treaty rights are accommodated, as necessary. The responsible ministers encourage the FRMG to participate in the Wek'èezhì Land and Water Board's water licensing process and any other post-environmental assessment processes relating to this Project.

If you have any questions about the decision, please contact Melissa Pink, Manager, Project Assessment Branch, at Melissa_Pink@gov.nt.ca or by telephone at 867-767-9180 ext. 24021.

Sincerely,



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