

JUN 04 2020

President Garry Bailey
Northwest Territory Métis Nation
P.O. BOX 720
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By Email

Dear President Bailey:

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 Northwest Territory Métis Nation

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 Northwest Territory Métis Nation (NWTMN) 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 are also encouraged the NWTMN to participate in the Review Board's process.

Responsible ministers also wrote to NWTMN 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 NWTMN 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 NWTMN during the environmental assessment and after the REA was issued.

In your letter of February 15, 2020, you noted three outstanding topics of concern, which responsible ministers considered prior to deciding on the Review Board's recommendation. Responsible ministers believe that the outstanding concerns, as stated by NWTMN, are meaningfully addressed through the REA and available mitigation. The rationale behind this determination is described below.

Considering NWTMN's concern for potential adverse effects and lack of consultation

The first topic noted in your letter was that NWTMN remains concerned that there is the potential for adverse effects and Diavik had not adequately consulted nor accommodated the NWTMN on this topic. Responsible ministers note that the Review Board agreed with the NWTMN and determined that there had not been enough effective engagement with IGOs. To ensure that in the future IGOs, including NWTMN, are engaged appropriately, the Review Board included Measure 5 in the REA. Measure 5 requires Diavik to conduct additional and more effective engagement with potentially affected Indigenous communities. The measure sets out some of the terms for the engagement and requires enhanced opportunities for potentially affected Indigenous communities to provide feedback directly to Diavik about the Project, its potential impacts, and mitigation options. Measure 5 also requires Diavik to report back to potentially affected Indigenous communities in response to feedback received from the communities. The implementation of this measure will ensure your concern regarding the adequacy of Diavik's engagement is addressed. The implementation of the other five measures should also assist mitigating any potential significant adverse impacts to the Project area. Responsible ministers are confident that Measure 5 will be satisfactorily achieved as Diavik reiterated its commitment to meaningfully engage potentially impacted IGOs, including NWTMN, in its February 27, 2020 letter to the GNWT.

Considering NWTMN's request for a Participation Agreement

The second concern noted in your letter was that NWTMN does not have a Participation Agreement with Diavik and that the Government should require Diavik to enter into a Participation Agreement with NWTMN.

NWTMN stated that the Agreement “may provide opportunities for Indigenous Métis businesses and to employment opportunities for Indigenous Métis members of the NWTMN” and should “also include resource revenue sharing.” While the responsible ministers appreciate the desire to be compensated for “the resources that are extracted by Diavik from our [NWTMN] lands,” responsible ministers do not have the authority to require Diavik to enter into a Participation Agreement with NWTMN.

The responsible ministers note that in Diavik’s February 27, 2020 letter, Diavik stated that it is “committed to continued involvement of Indigenous groups in employment and contracting opportunities for the existing Diavik Mine operations in general and the [Processed Kimberlite to Mine Workings] Project specifically.” As such, NWTMN can engage directly in discussions with Diavik regarding a Participation Agreement; responsible ministers encourage NWTMN to reach out directly to Diavik regarding business and employment opportunities.

Considering NWTMN’s request for funding

The final concern noted by NWTMN was that NWTMN required funding “to be fully involved in the environmental monitoring of the...Project.” Specifically, the NWTMN requested funding to conduct on-site environmental monitoring, desk-top technical reviews and traditional knowledge monitoring. While Measure 2 does not explicitly state that Diavik will provide funding to IGOs, responsible ministers believe that this measure begins to address some of NWTMN’s identified funding expectations.

To satisfy Measure 2, Diavik will need to ensure that NWTMN can participate in developing criteria for determining if the water in the pit lake(s) is acceptable for cultural use. Diavik will also need to work with and support involvement of IGOs, including NWTMN, to develop and implement long-term monitoring, informed by Traditional Knowledge, of the pit lakes.

NWTMN said it also “expects to receive funding to develop and conduct monitoring of the pit lake, including...fish health and movements [and] wildlife monitoring around the pits,” In this instance, responsible ministers agree with the Review Board’s assessment that the pathway of effect for fish and wildlife is through water quality. Fish and wildlife are suitably protected through the suite of measures that mitigate the potential water quality impacts. Therefore, additional monitoring, outside of the current measures, Diavik’s commitments and monitoring plans associated with the regulatory phase, is not required. NWTMN is encouraged to engage in discussions directly with Diavik for any potential funding opportunities.

The NWTMN is also eligible to apply for Resource Pressures funding from the GNWT’s Interim Resource Management Assistance program,

which could assist the NWTMN to participate in the regulatory review of this Project should NWTMN's application be approved.

During the regulatory review, the NWTMN can provide advice to the Wek'èezhì Land and Water Board regarding the development of water quality criteria. Through that same regulatory process, the NWTMN can participate in the review of relevant monitoring plans and management programs, providing advice and recommendations to the Board. Responsible ministers remind NWTMN that at any time, IGOs can engage directly with Diavik on the Project; this includes engaging to better understand what type of support Diavik is willing to offer. Responsible ministers believe that the mitigations described above satisfy the concern NWTMN has raised regarding funding for studies. Based on the analysis above, responsible ministers respectfully believe the duty to consult and accommodate the NWTMN 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 NWTMN 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 Ms. 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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