



Yellowknives Dene First Nation

P.O. Box 2514, Yellowknife, NT X1A 2P8

January 24th, 2014

Alan Ehrlich
Mackenzie Valley Environmental Impact Review Board
Box 938
Yellowknife, Northwest Territories
X1A 2N7
Fax: (867) 766-7074

Dear Mr. Ehrlich:

Re: Giant Mine Report of Environmental Assessment – Consult to Modify

The Yellowknives Dene First Nation (YKDFN) has reviewed the proposed modifications and believe that the modifications do not alter the spirit of the decision. With this perspective YKDFN would like to offer the following suggestions to improve or clarify the modifications to the Measures.

- Note: unaltered text is the original MVEIRB language; Bold is the suggested modification; red is YKDFN addition/changes

Measure 3

Broadly speaking, YKDFN do not object to the modification of Measure 3. However, we wish to explicitly note that the broader range of activities envisioned for the oversight body significantly changes the dimension of work that was envisioned during initial discussions. Originally the Oversight Body was envisioned as a very lean group with no staff that would meet on an occasional basis. The modification, which makes it responsible for issuing reports, financial administration and planning is to place a much higher, and perhaps unacceptable, burden on the potential members. This will require additional resources potentially leading into having a staff to support the implementation of the future environmental agreement.

Measure 4

YKDFN have no objection to the suggested modifications, but are unclear on the rationale behind their inclusion. Other than the reference to the oversight body, after reading the new language we are confused on what improvements the additional clarity bring.

Measure 5 and 10

YKDFN believe that the new language provides for a timeline that will not allow for meaningful inclusion into the process. We do not believe that these studies need to be linked to regulatory applications or approvals, but rather that preliminary reports should be completed as soon as possible. YKDFN believe that the water license application is not likely to be submitted until 2015, the submission of a preliminary report focusing on study design is a useful milestone to ensure progress at that time.

Secondly, YKDFN believe that the final reports should be completed within two years of ministerial acceptance of the Report of Environmental Assessment. This conforms to the project's response to the REA, where these studies were expected to be completed within 18-24 months. Should the project not be in a position to submit completed assessments, a progress report must be provided.

As presently proposed, linking the delivery to achieving 'regulatory approvals' may result in a long delayed provision of a final report (Given the length of time that the EA has taken and the early nature of design for this project). If the project acts expeditiously to meet the suggested milestones, the results will likely be available to be incorporated into the water licensing phase.

*Measure 5 suggested language: In order to mitigate significant adverse impacts that are otherwise likely, the Developer will commission an independent quantitative risk assessment. **A preliminary report, including the study design, will be completed prior to submitting regulatory applications. The final report will be completed within two years after the final ministerial acceptance of the Report of Environmental Assessment.** This will include:*

- *explicit acceptability thresholds, determined in consultation with potentially affected communities*
- *an examination of risks from a holistic perspective, integrating the combined environmental, social, health and financial consequences.*
- *possible events of a worst-case/ low frequency high consequence nature*
- *additional considerations specified in Appendix D of the Report of EA*

From this, the Developer will identify any appropriate Project improvements and identify management responses to avoid or reduce the severity of predicted unacceptable risks.

*Measure 10 suggested language: The Developer will commission a comprehensive quantitative human health risk assessment by an independent, qualified human health risk assessor selected in collaboration with Health Canada, the Yellowknives Dene, the City of Yellowknife, and the Developer. **A preliminary report, including the study design, will be completed prior to submitting regulatory applications. The final report will be completed***

within two years after the final ministerial acceptance of the Report of Environmental Assessment.:

- *Include a critical review of the 2006 Tier II human health risk assessment and the previous screening reports;*
- *Consider additional exposures and thresholds (as specified in Appendix F of the Report of EA);*
- *Decide whether a Tier III risk assessment is appropriate;*
- *Provide a plain language explanation of the results in terms that are understandable to the general public, and communicate this to potentially affected communities in a culturally appropriate manner;*
- *Provide interpretation of results and related guidance; and*
- *Inform the broad health effects monitoring program (described in Measure 9 above).*

Based on the results of this human health risk assessment, and on the results of the health effects monitoring program (described in Measure 9 above), the Developer will, if necessary in response to this information, identify, design and implement appropriate design improvements and identify appropriate management responses to avoid or reduce the severity of any predicted unacceptable health risks.

Measure 7 – Oversight Body

YKDFN have reviewed the suggested modifications and do have concerns with the alterations. First, we do not believe that the Oversight Working Group provides an acceptable substitute and we believe that the measure should remain focused on achieving the end goal as soon as possible. Secondly, we believe that the Minister’s intent to have the Oversight Body in place as early as possible is soft and we would prefer that the measure has milestones to ensure the timely delivery of an essential mitigation for the Yellowknives Dene and the Canadian Public.

Measure 7 suggested language: The Developer will negotiate a legally-binding environmental agreement with, at a minimum, the members of the Oversight Working Group, and other appropriate representative organizations, to create an independent oversight body for the Giant Mine Remediation Project. These negotiations will build on the existing discussion paper and draft environmental agreement of the Giant Oversight Working group. The environmental agreement will include a dispute resolution mechanism to ensure compliance with the agreement and a stable funding mechanism for the oversight body.

Every effort will be made to have the Oversight Body in place as early as possible, with the goal to have an environmental agreement completed within six months of Ministers acceptance of the Report of Environmental Assessment. Should a draft agreement not be completed within this time, the negotiations would be referred to mediation. If significant

progress has not been achieved within three months of mediation, the process would be referred to binding arbitration.

Measure 11 (12 & 13) – Baker Creek

YKDFN do not object to providing the project with flexibility for assessing future options, but believe that the Measure should be written in a way that if the options analysis suggests that action is required, the project should be required to complete the works recommended. As presently written, the only requirement is for the project to undertake an options analysis. We believe that the key focus must be on the outcome, not on the process.

*Measure 11 suggested language: **The Developer will thoroughly assess options for, and the environmental impacts of, diversion of Baker Creek to a north diversion route previously considered by the developer, or another route that avoids the mine site and is determined appropriate by the developer. Within one year of the project receiving its water license, a report will be provided to the appropriate regulatory authorities, the Oversight Body and the public.***

Once informed by the advice of the Oversight Body and regulatory authorities, the Developer will determine the final alignment for Baker Creek. If off-site diversion is recommended by the options analysis, the Developer will seek required regulatory approvals to implement the diversion within 5 years of receiving its initial water license.

Measure 15 – Water Quality Objectives

YKDFN oppose these changes as the ministers concern seems to be misplaced. The previous impacts to the environment are not relevant to the consideration and future regulation associated with this measure. The Measure is explicit – any degradation in the receiving environment cannot be due to “effluent discharge”. Thus, any previous environmental is not relevant – the project itself argued this in discussions on the scope of the project.

Secondly, by moving the water quality objective point from 200 metres to 500 metres, we must be aware that the point of environmental compliance is being significantly changed – this is not a minor alteration. The mixing zone is not being altered by 1.5 times, but by more than 6 times.

- Using an average depth of 2m and half circle (to account for the shoreline) with a radius of 200 metres the mixing zone is 0.25M m³
- Using an average depth of 4m (due to reaching future offshore) and a half circle with a radius of 500 metres, the mixing zone is 1.57M m³

Other licensed operations in the territory use a mixing zone of 200 metres. If the project is going to vary from this approach, it should be supported by a much stronger rationale. YKDFN is

requesting direct communication with the responsible Ministers to clarify the rationale for this proposed change.

YKDFN do accept the change from “beyond 200m” to “at 200m” as it provides additional clarity.

Measure 15 suggested language: The Developer and regulators will design and manage the Project so that, with respect to arsenic and any other contaminants of potential concern:

- 1) Water quality at the outfall will meet the Health Canada Guidelines for Canadian Drinking Water Quality; and,*
- 2) The following water quality objectives in the receiving environment are met:*
 - a) Water quality changes due to effluent discharge will not reduce benthic invertebrate and plankton abundance or diversity at 200 metres from the outfall;*
 - b) Water quality changes due to effluent discharge will not harm fish health, abundance or diversity;*
 - c) Water quality changes due to effluent discharge will not adversely affect areas used as drinking water sources; and,*
 - d) There is no increase in arsenic levels in Yellowknife Bay water or sediments at 200 metres from the outfall.*

YKDFN are looking forward to the finalization of the Report of Environmental Assessment. With the path forward resolved on, we are keen to get working and work towards a successful remediation of this site. If there are any questions or if we could provide additional clarification, please don't hesitate to contact the YKDFN Lands and Environment Department at (867) 766-3496.

Sincerely,

Shannon Gault
Director, Lands and Environment

cc: Jane Amphlett, GIANT Project, Yellowknife (By Email)
Kevin O'Reilly, Alternatives North, Yellowknife (By Email)