



Wildlife, Lands and Environment Department

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Mr. Chuck Hubert
Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre Box 938,
5102-50th Ave
Yellowknife, NT
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Re: EA1314-01 - Lutsel K'e Dene First Nation's Closing Arguments for the Jay Project

Dear Mr. Hubert,

Lutsel K'e Dene First Nation would like to thank you for the opportunity to participate in the environmental assessment process, and we have attempted to do so to the best of our ability. Lutsel K'e Dene First Nation (LKDFN) would like to submit its closing arguments regarding the environmental assessment of the proposed Jay Project (EA1314-01) for the consideration of the Board through this letter. We are hopeful that the Board will consider LKDFN's views presented throughout this process and that they will influence their recommendation as to whether or not the development should proceed. Should the project be approved, LKDFN hopes that the Board will consider their recommendations when determining the measures set forth to govern the environmental management of this development.

As the Board Members saw during our community hearing, the community of Lutsel K'e is extremely concerned about this development. Community members of various ages, vocations and perspectives came out to express their concerns and there was not enough time to hear all of them, suggesting a high level of interest among community members. The Board did state that written submissions would be accepted; however, the community has strong tradition of oral, face-to-face communication, and several community members expressed their strong desire to state their views directly to Board members.

In general, the majority of the views expressed by community members trended towards opposing the development of the Jay Pipe in its entirety. There are numerous reasons for this, but three stand out. The first is that LKDFN takes its stewardship over its Traditional Territory very seriously, and all community members are witnessing

changes, some of them adverse. The second is that LKDFN has never officially ceded the governance of its traditional territory, and it does not seem just to community members that the original inhabitants and stewards of this land would not have the final decision as to what is done to it. The third is that there are specific concerns related to the location of this project, most importantly the potential effects on caribou and water.

For this first particular point, it is not relevant what the level of significance of impacts from Jay would be. What is of relevance is that community members are seeing more mines in their Traditional Territory and there is no end in sight. While the number of active mines is relatively low, the strong mining tradition in the Northwest Territories means that there are a large number of decommissioned mines and likely there will be many new ones proposed. While a mine drops off the map after closure, its mark does not disappear from the land and it continues to impact the lives of community members who travel all over their Territory while practicing their traditional livelihoods. It does not matter how residual impacts are quantified. What matters is that it is undeniable that every mine site is dramatically different after closure from how it was before exploration. LKDFN sees these changes and, besides seeing them as aesthetically unpleasant, we posit that it is impossible to honestly maintain that these changes do not have any impact at all on the ecosystem and that these changes don't add up over time.

While mining companies have as a primary objective the earning of profit, LKDFN has the protection of its Territory and traditional livelihoods as a main goal. These views, while not always diametrically opposed, often come into conflict. LKDFN is not particularly naïve, understands the level of influence that resource development corporations have, and recognizes that stopping all mining in the north is not a reasonable objective. However, what disturbs LKDFN is the wholehearted acceptance of the mining companies' view that if there are minerals in the ground that can be sold, they should be removed and sold. This is reflected in discussions with government regarding the establishment of a national park within LKDFN Territory, where government wishes to restrict the size of the park and reserve some areas for development. LKDFN is not trying to restrict development in its entire Territory. We have asked for a small portion to be set aside, and even this is being contested because there may be something that can be removed and sold. This perspective is deeply concerning and cannot be referred to as "balanced." There has never been a discussion of limiting further mining in LKDFN territory and the assessment of cumulative effects is woefully inadequate, while conversely, large amounts of resources are poured into supporting exploration and attracting further development. This does not seem like balance and it is difficult for LKDFN to not see it as biased, especially when many of their concerns are dismissed and their position is merely taken into consideration rather than being a deciding factor.

This leads to the second point of governance. LKDFN feels responsible for its Traditional Territory and believes that as the original inhabitants and the actual users of the land, LKDFN should have final say regarding developments in LKDFN Territory. The mining company and their employees do not live off the land and do not use it. The employees

eat in a cafeteria with food imported from the south and almost none of them venture off site to use the land. Once a mine is closed, the employees and owners are generally never seen in the area again. LKDFN is the opposite. LKDFN members travel all over their Territory and depend directly on the land for their sustenance. Generations from now, there will still be LKDFN members travelling over old mine sites and seeing the waste rock piles and remnants of other infrastructure, while some mine employees may have forgotten all about the mine entirely. It does not seem right that this kind of development can be imposed on a founding population who depends on the land to benefit those who don't, many of whom may never even see it. When a community member compares the establishment of a waste rock pile to having a dump truck empty its load on the front lawn of a church down south, it is dismissed. However, if honestly considering LKDFN's perspective, this is an apt comparison. The land is the community's place of worship and it is offensive to have it marred with pits and piles of rock. It is especially distressing that community members have little say in what is done and this leads to a high level of frustration within the community.

Ultimately, the community opposes the Jay Project. This is for the reasons mentioned above, as well as the third reason, which is that this project is proposed in a particularly sensitive area of caribou habitat and there are also some risks to water quality, which will be further discussed below. As noted by LKDFN members during the community hearing, it is quite possible that this mining development will be approved regardless of community opposition. If this is the case, then LKDFN has specific concerns with some of the proposed activities, in addition to the opposition to the project as a whole elaborated above, and would like to make requests and recommendations outlined below.

LKDFN would like to thank Dominion Diamonds for their efforts to include us in this process and their openness to dialogue, which is not always LKDFN's experience with resource development companies. The company has made concessions in response to LKDFN's earlier recommendations and requests, which are much appreciated. However, the current commitments and concessions are not enough to reassure LKDFN that there will not be significant impacts on the physical environment and on the traditional way of life practiced by so many LKDFN members.

LKDFN has made recommendations on the following topics:

- Air quality
- Socio-economic impacts and monitoring
- Use of Traditional Knowledge
- Climate change
- Comment on the regulatory process
- Caribou – cumulative effects
- Waste Rock Storage Area (WRSA)
- Meromixis in Jay Pit

I believe we have been fairly clear that caribou and water quality (associated with the WRSA and meromixis in this case) are the issues of most concern for the community. LKDFN believes that much more than what has been committed to needs to be done to address these concerns. A brief summary of LKDFN's closing thoughts on each subject follows.

Air quality

There were two issues raised here by LKDFN. The first is the application of the NWT Ambient Air Quality Standards (AAQS), and the second is the issue of dust management. In terms of the AAQS, the company's stance has not changed. They maintain that they will apply these standards, yet they simultaneously state that exceeding them should not be considered a significant effect. This is contradictory in our opinion. If they have decided to apply the standards, this means that they do not plan to exceed them, and based on this commitment, they should not be allowed to do so.

It is difficult to define a significant effect in terms of air quality. The company claims that any exceedance would be temporary and reversible, but this does not seem like a sound argument. This would hold true for nearly any form of air pollution and it is tantamount to saying that any air pollution is not significant. The question then becomes what is the significance threshold for air quality? Well, given that there is only one threshold under discussion right now, the AAQS; and that, as mentioned in our technical report, this threshold is extremely lenient and the World Health Organization warns of significant health effects at a much lower threshold (http://whqlibdoc.who.int/hq/2006/WHO_SDE_PHE_OEH_06.02_eng.pdf), it does not seem defensible to claim that exceedances are not significant effects. LKDFN reiterates its request that, in the absence of binding air quality regulations, any exceedance of the AAQS be considered a significant negative effect.

On the subject of binding air quality regulations, LKDFN also restates the request that the GNWT establish binding air quality regulations. LKDFN fails to understand why the GNWT has delayed this long, and what is more confusing is their reticence to providing any information at all on this process. They have made every effort possible to avoid any transparency on this issue. Please see their response to Undertaking #4 as an example. This cannot be characterized as anything else other than evasion, as it is impossible that the person submitting this response could believe that this answers the questions posed by LKDFN. LKDFN requests some level of transparency from the government and some information that helps concerned parties understand what the process for developing these regulations will be and that allows them to very broadly estimate how long it will take.

Lastly, the subject of dust management: The company has increased their commitment to dust management in response to the concerns raised. This is very much appreciated. Dust is often raised as an issue by Elders when discussing caribou and efforts to suppress it and understand how it is deposited are extremely important to them. One

item that LKDFN did not see in the company's responses is a commitment to monitoring lichen for the effects of dust. This is something that Elders in Lutsel K'e have been asking for since first hearing of this project. If it was included and missed, I apologize. However, if it is not, LKDFN requests that this be part of research done by the company.

LKDFN's updated recommendations for air quality are:

- 1) LKDFN recommends that any exceedance of the Ambient Air Quality Standards be considered a significant effect.
- 2) LKDFN also requests that the GNWT complete legally binding air quality regulations as soon as practicable, and provide information to parties on the process and timeline for these regulations.
- 3) LKDFN also recommends that the Developer prepare a dust management plan, including a comprehensive monitoring program that includes lichen sampling and details about dust suppression efforts at site. (LKDFN recognizes that the company has done much of this, but requests further work in this area.)

Socio-economic impacts and monitoring

As stated several times before, this is an important concern for the community and the community does not see action taken on it, regardless of whether it is being addressed or not. The GNWT claims that there are programs in place to address negatively trending indicators, but many residents are not aware of them. It is very difficult to find information about these programs and the GNWT has admitted in questioning that it does not have an information resource allowing people to see what is being done to address socio-economic impacts.

The GNWT does produce the Communities and Diamonds report each year. However, there are two large issues with this. One issue is that while the report does present data on the indicators, there is no discussion of what is being done when the trend of an indicator is undesirable. While the data is very much appreciated, what is more important is to see that action is being taken when a problem is evident. The second issue is that repeatedly in the report it is stated that no effect from mining is discernible without any evidence to support this statement. Questioning from the public hearing clarified that the GNWT has not done ANY research into socio-economic impacts from mining. Therefore, a statement of a lack of effect is completely baseless and should not appear in an official publication. This is especially concerning when the company is making the claim that the development will have net positive socio-economic effects. Given that this is the position of many mining companies, LKDFN would like to know why the GNWT has not bothered to investigate this in any way.

In discussions with other aboriginal groups, the idea of a separate panel for the evaluation of socio-economic effects. LKDFN is supportive of this idea. The key issue here is that the links between Ekati and socio-economic impacts in communities has not been adequately explored, and it does not appear that there are plans to augment any

of this research in the development of the Jay Project. A panel would be one way to address this issue, but LKDFN is open to alternative suggestions.

Lastly, LKDFN expressed concerns that the meetings between the GNWT and the company were kept secret. Both parties have committed to reporting on the content of these meetings. LKDFN appreciates this commitment.

LKDFN's updated recommendations for socio-economic impacts and monitoring are:

- 1) LKDFN recommends more stringent monitoring and stronger commitments to the SEA objectives. A good start would be a more structured reporting system for SEA indicators and increased transparency regarding discussions between the GNWT and the project proponent.
- 2) LKDFN requests that the GNWT conduct research into the effects of mining on socio-economic conditions in NWT communities. One way would be the establishment of an independent panel for the evaluation of socio-economic effects. LKDFN further requests that the GNWT refrain from making statements about a lack of effect from mining until it has conclusive evidence to support these statements.
- 3) LKDFN recommends a clear and explicit discussion of the SEA objectives in every edition of the *Communities and Diamonds* report. Where progress towards the achievement of an objective is determined to be lagging, there should be a list of clear and concrete measures being implemented to address this shortcoming.
- 4) LKDFN recommends a comprehensive monitoring plan for SEA objectives be developed for each of the affected communities in collaboration with the leadership in each community. This plan should clearly describe the methodology used for measuring each indicator within the community, as well as explicitly assigning accountability for each monitoring activity.

Use of Traditional Knowledge

While this was discussed to some degree, there has been no commitment addressing LKDFN's original recommendations and therefore they remain unchanged. The only additional comment LKDFN would like to make is that in discussions with other aboriginal groups, the idea of an independent Traditional Knowledge (TK) panel composed of TK experts was raised. LKDFN would be supportive of this panel.

LKDFN's original recommendations for Traditional Knowledge are:

- 1) LKDFN recommends that Traditional Knowledge be integrated in all discussions of any of the valued components for the remainder of planning and the entirety of operations, monitoring and closure.
- 2) LKDFN recommends engaging the expertise of world-class experts to develop protocols, including practical measures, for the incorporation of Traditional Knowledge.

- 3) LKDFN recommends that the mine operator make efforts to provide access to traditional knowledge holders to the land around the mine site for observations to be compared to the historical knowledge in their possession. This could take the form of a land camp or other formal arrangement.
- 4) LKDFN recommends that concrete references be made in all further documentation to the Traditional Knowledge gathered for each component as the component is discussed, rather than relegating it to a separate section or annex.
- 5) Where Traditional Knowledge conflicts with scientific studies, LKDFN recommends a discussion of attempts made to reconcile the two knowledge sources, and failing reconciliation, a presentation of justification for choosing one over the other.

Climate Change

LKDFN's recommendations regarding climate change remain unchanged and are:

- 1) LKDFN recommends as much information sharing about climate change adaptation measures as possible, and recommends that the Developer include a brief update during community visits.
- 2) LKDFN also recommends that the Developer continue and expand efforts to reduce emissions, especially in the area of alternative energy, pursuing similar initiatives to Diavik and their use of wind turbines.

Regulatory Process

As this comment was never addressed, LKDFN maintains its position that there is a need for dependable and predictable participant funding during the environmental assessment process. The recommendation remains unchanged:

- 1) LKDFN recommends that the Government of the Northwest Territories, the Federal Government of Canada and major mine operators in the Northwest Territories hold meetings as soon as possible with the aim of agreeing upon a formal process to support the participation of communities impacted by development in the regulatory process.

Caribou

It is not inaccurate to state that caribou are the largest concern for the community of Lutsel K'e when it comes to mining developments. As stated earlier, caribou are central to the traditional livelihoods and spiritual beliefs of the people of Lutsel K'e. This true for many of the other aboriginal groups and is reflected in the fact that the longest day of the hearing was dedicated in its entirety to potential impacts on caribou.

LKDFN appreciates the efforts made by the company to address the concerns raised during the hearing. LKDFN especially appreciates the extra resources dedicated to research and to monitoring. However, LKDFN still does not believe that enough is being done to reduce the impacts on caribou and discover the reasons for the Bathurst herd's collapse. The concern expressed by LKDFN members over the precarious state of the Bathurst caribou herd cannot be overstated. Given that this is considered a crisis by many, and that LKDFN is not the only party with the view that any impact on this herd would be considered significant, LKDFN believes that EVERY effort possible should be made to eliminate impacts and encourage the growth of this herd.

LKDFN's updated recommendations for addressing caribou are:

- 1) LKDFN requests that the Board make a determination that the Jay Project would have significant, negative, cumulative impacts on the Bathurst caribou herd.
- 2) LKDFN recommends that the Developer collaborate with impacted communities, the GNWT, and other mine operators to commission independent research into which elements of the project are having impacts upon caribou, their severity and innovative mitigation measures to reduce these impacts. This research should be comprehensive and encompass all aspects of the mine. LKDFN recommends increasing research and monitoring of known stressors, such as vehicle traffic and an increased Zone of Influence, while also expanding to areas where impacts are suggested but not well-researched, such as power-lines and light fixtures. Ideally, this research would be coordinated by a working group assembled for this task. The structure and mandate of this working group should be approved by all intervenors in this regulatory process.
- 3) LKDFN requests that separate and explicit funding be provided for TK research into caribou impacts that is to be developed in collaboration with implicated aboriginal parties, with final approval resting with the aboriginal parties.
- 4) LKDFN requests that a firm commitment to monitoring caribou in and around the mine site, including on the Waste Rock Storage Area until it can be demonstrated that all mine impacts on the herd have been reversed or until 20 years after mine closure. The monitoring approach and methodology should be approved by the aboriginal parties or an independent entity approved by the aboriginal parties.
- 5) LKDFN recommends that the Developer consult with affected communities and agree upon offsetting measures to mitigate the significant impacts to traditional livelihoods and the Bathurst caribou herd. This offsetting could include measures to improve conditions for caribou (for example, through improved and faster reclamation of disturbed habitat), measures to compensate for the loss of traditional livelihood opportunities and sustenance through the provision of alternate opportunities, or even direct financial compensation.
- 6) Given the company's confidence that the project will have no significant impacts on the Bathurst Herd, a position with which LKDFN disagrees, LKDFN recommends that the company be required to submit a security deposit to back up this claim. If indeed there are no perceived impacts on the caribou herd, then this security deposit shall be returned in full. If impacts can be demonstrated, then the security deposit is used for additional mitigation measures and offsetting. LKDFN recommends 10% of the current overall security deposit as an amount for this caribou-related deposit.

Waste Rock Storage Area

The Waste Rock Storage Area (WRSA) has been raised as a concern by several community members. The primary concerns are that it is located so close to water bodies and that it is a disturbance to caribou. When questioning IEMA about Ekati's management of existing waste rock piles, it was revealed that there have been concerns and that the Wek'èezhìi Land and Water Board was planning a review. Given this track record, it is especially important to be cautious when establishing new rock piles, especially so close to water and directly in the path of a major caribou migration route.

LKDFN is concerned that not enough monitoring is being done to assess how the WRSA affects caribou; until now monitoring commitments regarding the WRSA have been limited to "incidental" caribou sightings. LKDFN believes that given the size of the WRSA, it is difficult to see caribou on the WRSA and active monitoring is necessary. LKDFN is also concerned that there is no long-term contingency for seepage from the WRSA. As mentioned earlier, LKDFN will be here long after mine closure and would like assurances that there will never be seepage from this WRSA. Until now, the developer has not made significant changes to the design or management of the WRSA and has not presented any long-term management plan for seepage; therefore LKDFN's recommendations remain very similar.

LKDFN's recommendations for addressing the WRSA are:

- 1) LKDFN recommends that the Developer present an enhanced monitoring plan for monitoring the use of the WRSA by caribou.
- 2) Given that LKDFN considers all impacts to caribou significant and has asked for enhanced reclamation measures to accommodate caribou, LKDFN recommends that the Developer present options for innovative methods for enhanced reclamation of the WRSA to improve it as habitat for caribou to the extent possible. LKDFN would expect that these options would involve changes in the design of the waste rock pile and meaningful reclamation measures above and beyond what has been proposed to date.
- 3) LKDFN recommends a revised WRSA management plan that includes adaptive management measures during mine operations and closure, but also options for longer-term adaptive management should seepage occur at any time post-closure.
- 4) LKDFN requests specific details for the management of sediments contaminated with mercury, along with specific measures to prevent mercury from entering any water bodies. LKDFN recognizes that the company has committed to this and has already presented some preliminary information, but we restate it here as it is an issue of particular concern for LKDFN members.

Meromixis in Jay Pit

The company has admitted multiple times through the hearing that their plan to establish meromixis in Jay Pit is a unique situation. In both LKDFN and DKFN's presentations it was demonstrated that the lakes that were presented as previous examples are not representative of what is being proposed. Therefore, something novel is being tried here.

While LKDFN is not disputing the science behind the concept of meromixis, it has to be acknowledged that meromixis is not guaranteed. At no point was the company able to guarantee that the establishment of meromixis is a certainty, even when asked directly. Granted, complete certainty is often impossible for things like this; however, given that there is uncertainty, that this is not a tried and tested approach and that there is a risk to water quality should there be mixing, it is prudent to be cautious.

LKDFN does not doubt that the company has diligently studied this plan. LKDFN is not attempting to disparage the experts engaged in these studies. However, with an undertaking as large and as untested as this one, it makes sense to increase certainty to the extent possible. For this reason, LKDFN very strongly recommends that a second opinion be obtained before proceeding. The company has countered this by citing the studies they have performed and also the fact that Board staff have analysed their studies. LKDFN does not dispute any of this. However, the studies the company have performed are the first opinion, and the analysis of the Board staff is simply analysis of this first opinion done by people who have a lot of other work to focus on and who may not have this specific subject as their foremost area of expertise. A true second opinion would come from experts in this subject who have had the opportunity to focus solely on this issue for an appropriate amount of time. For this reason, LKDFN maintains its request for an independent panel to assess the risks from attempts to establish meromixis in Jay Pit.

LKDFN's recommendations regarding meromixis in Jay Pit remain unchanged:

- 1) LKDFN recommends that an independent review panel be established to thoroughly analyse:
 - a. the probability of meromixis being established;
 - b. the probability of meromixis being maintained in perpetuity;
 - c. the significance of impacts, both direct and indirect, if mixing were to occur;
 - d. the geographic extent of impacts, should mixing occur;
 - e. the likelihood of meromixis being re-established after mixing, should it occur, and estimates as to how much time would be required for this re-establishment, should re-establishment of meromixis be deemed possible.

LKDFN would like this panel to then present its findings as well as recommendations on:

- a. adaptive management measures should it become evident that meromixis will not be established, these should include early warning systems to allow for identification of the issue as early as practicable, a fully fleshed out contingency plan for disposal of the minewater should disposal in the Jay Pit not be feasible due to mixing, and clear recommendations as to which organization would be accountable for these measures;
- b. similar adaptive management measures should a disturbance cause mixing during DDRC's operations in the Northwest Territories;
- c. options for minimizing the risk of mixing after DDRC can no longer practicably be held accountable for mine effects;
- d. options for adaptive management by the GNWT and other implicated parties for minimizing impacts should mixing occur in the distant future;

LKDFN envisions this panel to be similar in nature to panels established for the review of mine infrastructure, such as dyke review panels.

Closing

In closing, LKDFN would like to thank the Board for the opportunity to participate in this process and would also like to thank Dominion Diamonds for their collaboration and dialogue throughout. As mentioned above, ultimately LKDFN opposes the Jay Project. This is not because LKDFN considers the company to be irresponsible, although the concerns with the proposed plan have been outlined above; but because of the development's specific location and the cumulative impacts that an ever increasing number of mines will have on LKDFN Traditional Territory, both on the physical environment and on the lives of the people living in it. LKDFN members take their stewardship of the land very seriously and we hope that the Board will take this into consideration when making their decision. Should the Board decide to approve the project against the wishes of the community, we hope that they will at least incorporate the recommendations we have presented over the course of this regulatory process.

Thank you,



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