



MAY 19 2016

Ms. JoAnne Deneron
Chairperson
Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
P.O. Box 938
YELLOWKNIFE NT X1A 2N7

Dear Ms. Deneron:

Decision on the Report of Environmental Assessment and Reasons for Decision for the Dominion Diamond Ekati Corporation Jay Project (MVEIRB file number EA1314-01)

As the Minister with delegated authority to distribute decisions made under section 130 of the *Mackenzie Valley Resource Management Act* (MVRMA), and on behalf of the other responsible ministers with jurisdiction related to the above noted development, I am writing to convey our decision with respect to the recommendation made in the Mackenzie Valley Environmental Impact Review Board's (MVEIRB, Review Board) *Report of Environmental Assessment and Reasons for Decision* (the Report) for the Jay Project received on February 1, 2016. As the Minister of Lands, I am a responsible minister; the other responsible ministers for the Government of the Northwest Territories are the Minister of Environment and Natural Resources and the Minister of Health and Social Services. Responsible ministers for the Government of Canada are the Minister of Transport and the Minister of Fisheries, Oceans and the Canadian Coast Guard as consolidated by the Minister of Indigenous and Northern Affairs.

In the Report, MVEIRB recommended under sub-paragraph 128(1)(b)(ii) of the MVRMA that the Project be approved subject to the implementation of the measures and developer's commitments recorded in the Report.

.../2

As part of the analysis of the Report, the Government of the Northwest Territories (GNWT) and the Government of Canada (GoC) consulted with Aboriginal governments and organizations regarding whether the Report fully addressed potential adverse impacts of the proposed Project on asserted or established Aboriginal and/or Treaty rights. In this process, GNWT and GoC consulted with the Tłıchq Government, the Yellowknives Dene First Nation, the Łutselk'e Dene First Nation, the Deninu Kué First Nation, the North Slave Métis Alliance, the Fort Resolution Métis Council, and the Kitikmeot Inuit Association.

The responsible ministers' analysis included careful consideration of:

- the above noted *Report of Environmental Assessment and Reasons for Decision* (February 1, 2016);
- the March 9, 2016 letter from the Review Board to the Minister of Lands rectifying a clerical error in Measure 13-4;
- documents on the Review Board's public record for the Jay Environmental Assessment;
- whether the proposed development might adversely affect established or asserted Aboriginal and/or Treaty rights;
- the following correspondence from Aboriginal governments and organizations after the Report was issued:
 - April 4, 2016 letters from each of the Łutselk'e Dene First Nation, North Slave Métis Alliance, Tłıchq Government, Yellowknives Dene First Nation, and Kitikmeot Inuit Association;
 - April 13, 2016 letter from Deninu Kué First Nation;
 - responsible ministers note that no follow-up communication was received from the Fort Resolution Métis Council regarding whether the Report addressed their concerns; and
- the April 25, 2016 letter from Dominion Diamond Ekati Corporation to the Northern Projects Management Office and the Government of the Northwest Territories.

The responsible ministers have given full and fair consideration to the views expressed by the Aboriginal governments and organizations during the environmental assessment and in recent correspondence. We have concluded that all points raised relating to potential adverse impacts from the proposed Project on asserted or established Aboriginal and/or Treaty rights have been

meaningfully and completely consulted on and will be accommodated, as appropriate, through the implementation of the recommended measures and the developer's commitments, as well as through processes established following the original Ekati environmental assessments in 1996 and 2001, which include the Environmental Agreement and the Independent Environmental Monitoring Agency, and the Socio-Economic Agreement.

The implementation of the measures and commitments will be further discussed in detail during the Wek'èezhìi Land and Water Board (WLWB) land use permitting and water licensing process, federal regulatory processes including a *Fisheries Act* Authorization and any potential Authorization under the *Navigation Protection Act*, GNWT review and approval of management plans as required in the Report, the developer's implementation of the Project, and continuing management and monitoring processes during Project operations. Concurrent with this decision letter, GNWT and GoC are sending letters providing responses to the concerns raised in the above-listed letters from Aboriginal governments and organizations and encouraging participation in regulatory and other processes.

The responsible ministers also note that consultation and engagement with respect to Aboriginal and/or Treaty rights do not end with the decision to adopt the Review Board's recommendation. The regulatory and other processes associated with the Project will allow for Aboriginal governments and organizations to offer input to help ensure that potential adverse impacts to Aboriginal and/or Treaty rights from the Project are addressed.

Under sub-paragraph 130(1)(b)(i) of the MVRMA, the responsible ministers have agreed to adopt the recommendation of the Review Board that the development be approved subject to the implementation of the measures and developer's commitments contained in the Report. I confirm that in making this decision, the responsible ministers have considered the importance of the conservation of the lands, waters and wildlife in the Mackenzie Valley on which the Jay Project might have an impact, as required under section 131.2 of the MVRMA. The well-being of communities was also considered.

For clarity, in considering Measure 6-6, the responsible ministers understand that the term 'management plan' for the Bathurst caribou herd is not in particular reference to the requirements under the Tłı̨chǫ Agreement (2005). As well, the use of the term 'recovery strategy' in the same measure was not in reference to requirements under the *Species at Risk (NWT) Act* or the *Species at Risk Act*. This understanding was confirmed with Review Board staff at a meeting on March 15, 2016 (public registry item #710).

The responsible ministers have noted the suggestions in the Review Board's Report. I encourage the WLWB, the developer, and Aboriginal governments and organizations, as applicable, to give due consideration to these suggestions; the responsible ministers commit to doing the same.

I wish to thank the Review Board for discharging its duties under the MVRMA in this matter.

Sincerely,



Robert C. McLeod,
Minister of Lands

c Honourable Glen Abernethy, Minister of Health and Social Services

Honourable Wally Schumann, Minister of Environment and Natural
Resources

Honourable Carolyn Bennett, Minister of Indigenous and Northern Affairs

Honourable Marc Garneau, Minister of Transport

Honourable Hunter Tootoo, Minister of Fisheries, Oceans and the Canadian Coast Guard

Grand Chief Eddie Erasmus, Tłıchǫ Government

Chief Edward Sangris, Yellowknives Dene First Nation

Chief Ernest Betsina, Yellowknives Dene First Nation

Chief Felix Lockhart, Łutselk'e Dene First Nation

Chief Louis Balsillie, Deninu Kué First Nation

President Bill Enge, North Slave Métis Alliance

President Arthur Beck, Fort Resolution Métis Council

President Stanley Anablak, Kitikmeot Inuit Association

Ms. Violet Camsell-Blondin, Chairperson, Wek'èezhìi Land and Water Board

Ms. Claudine Lee, Head of Environment and Communities, Dominion Diamond Ekati Corporation