



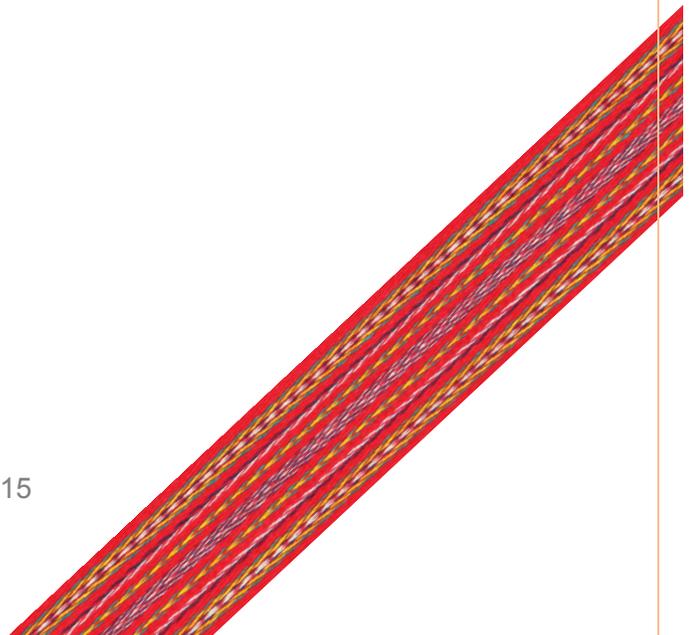
# Technical Report

For the Dominion Diamond Ekati Corporation Jay Expansion Project  
Environmental Assessment

Prepared by North Slave Métis Alliance

Submitted to Mackenzie Valley Environmental Impact Review Board

August 3, 2015  
NSMA



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## Executive Summary

The North Slave Métis Alliance (NSMA) represents indigenous Métis people who primarily assert their Section 35 aboriginal rights in the area north of Great Slave Lake. Our primary mandate is to protect our members' aboriginal rights, and ensure the sustainable use of natural resources in our territory.

In this Technical Report, our concerns are primarily focused on the social, economic, and cultural impacts of the project on our community by virtue of its interference with our ability to exercise of our aboriginal rights, including aboriginal title, self-government rights, and the right to occupy, use, enjoy, and benefit from the development of our traditional lands, waters and other resources, renewable and non-renewable. Selected bio-physical components are addressed due to their potentially imminent and significant impacts to the rights and well-being of our members. These are the threats to barren ground caribou and emission of greenhouse gases.

Other components, such as water, air, vegetation, fish, wildlife and soil are all crucial aspects of socio-cultural identity. However, due to our limited resources and internal expertise, those components could not be adequately assessed for this Technical Report. Unless otherwise stated, or contradicted in the NSMA Technical Report, NSMA, in general, endorses the views of Independent Environmental Monitoring Agency (IEMA).

NSMA has the following list of Measures for the Review Board to recommend to the Responsible Minister:

- The Developer shall establish an expert panel of traditional knowledge researchers in order to better incorporate traditional knowledge in its decision-making and management.
- The Developer shall enter into a traditional knowledge sharing agreement with aboriginal parties.
- The Developer shall support the aboriginal parties for their traditional knowledge research.
- The GNWT and the Developer shall fully implement or amend the Ekati Socioeconomic Agreement.
- Canada shall initiate the process of strength of claim assessment with the NSMA.
- The responsible minister (the Minister of ENR, GNWT), shall take into considerations the unique vulnerability that NSMA experiences, when delivering his or her decision on the EA.
- The Developer shall conduct a feasibility study on renewable energy technologies.
- The Developer shall contribute 10% of the cost-saving from its various energy use reduction campaigns towards GHG reduction initiatives in the NWT communities.
- The Developer shall develop a Caribou Compensatory Off-set Plan.
- The Developer shall redesign the Jay road and conduct aerial survey for the recovery of caribou
- The Developer shall Commit to Following NWT air quality guideline
- Canada and GNWT shall make available the participant funding program for environmental assessments held under Part V of the MVRMA

## Introduction of NSMA

The North Slave Métis Alliance represents the Aboriginal rights-bearing Métis of the Great Slave Lake area. As delineated in our mandate, it is our obligation to defend the Aboriginal rights of all our members. Since the 17th century, the North Slave Métis have continuously used and occupied the area surrounding Great Slave Lake, north to Great Bear Lake, and east to the barrens into what is now Nunavut. Métis settlements (such as Old Fort Island, Mountain Island, Lac la Martre, Yellowknife River, Old Fort Providence, Fort Resolution, Beaulieu Fort (Snowdrift and now known as Lutselke'), and Fort Reliance) existed before colonial powers established effective control over the area. Hence, the North Slave Métis people possess Aboriginal rights to these traditional lands, including aboriginal titles, rights to use and manage and benefit from the development of the renewable and non-renewable natural resources of the land. Such rights are recognised and protected under Section 35 of Canada's Constitution Act (1982). In addition, our Aboriginal Water Rights are protected by sections 14(4) b and 14(5) of the NWT

Waters Act. The Government of Canada has not yet begun negotiations with us to define the extent and application of our rights. However, we can look to the United Nations Declaration on the Rights of Indigenous Peoples and the Declaration of Human Rights, which Canada has endorsed, for guidance. Last, we rely on the 2003 R v. Powley decision of the Supreme Court of Canada, along with other Canadian jurisprudence.

The NSMA has been registered as a non-profit society in the Northwest Territories since 1996, for the stated purpose of negotiating a regionally based comprehensive claim centered in the North Slave Region of the Northwest Territories. Prior to that, our members were represented in the 1975-1990 Dene-Métis Comprehensive Claim negotiation process by the Métis Nation of the Northwest Territories (MNNWT), which was formed in 1972 to represent all indigenous Métis in the Northwest Territories. This organisation was disbanded after the Final Agreement was rejected, and the pan-territorial process was abandoned in favour of the pursuit of regional claims. The North Slave Métis Alliance was endorsed by the MNNWT as the North Slave Regional Métis land claim organisation before it was disbanded. It is also important to note that the Tłı̄chǫ Agreement contains a non-derogation clause, which states in section 2.7.1(b)(ii), General Provisions, that "No provision in the Agreement shall be construed to affect any Aboriginal rights of any Aboriginal people other than the Tłı̄chǫ."

NSMA takes its representation mandate seriously, and must continue to insist it be consulted and accommodated on any and all forms of activities, planned or underway, by public and private sector organizations, on its traditional lands.

The North Slave Métis are already severely disadvantaged and vulnerable due to the historic and ongoing discriminatory legislation, policy, and practices of the Canadian, Territorial, and Local governments. Inequitable allocation of benefits and costs of development will exacerbate the NSMA's already severely oppressed status. Preferential treatment for Status Indians negatively impacts pride in Métis identity and culture, governance, economic status and

### The NSMA Mandate:

1. Unite the indigenous of the North Slave Region
2. Promote pride in culture and heritage
3. Exercise responsibility to protect the environment
4. Promote and enhance education and, economic, social and cultural development
5. Promote recognition and entrenchment of Aboriginal and Treaty Rights
6. Negotiate, ratify, and implement a comprehensive self-government agreement

even community membership. Capacity issues prevent us from going into depth on all of our issues.

## List of General Subjects Reviewed

Notwithstanding the lack of capacity and absence of participant funding (see Concluding Remark and the suggested Measure 13), NSMA has reviewed, to the extent it was possible, the arguments and supporting evidences made available to the EA1314-01 [2013] Jay Project, and include the following general topics in this Technical Report:

- Issue 1: Incorporation of Traditional Knowledge
- Issue 2: Ekati Socio-Economic Agreement
- Issue 3: Resilience and Uncertainty
- Issue 4: Greenhouse Gas Emissions
- Issue 5: Cumulative Effects of Caribou
- Issue 6: Air Quality Monitoring and Management

# 1. Incorporation of Traditional Knowledge

## 1.1 Issue

*“One advantage in keeping a diary is that you become aware with reassuring clarity of the changes which you constantly suffer.”*

*F. Kafka*

Affected VCs are all the VC, which included traditional knowledge considerations. They are summaries of local and traditional knowledge related to air quality (DAR S 7.2.4), water quality (DAR S 8.2.6 & 9.2.7), vegetation (11.2.3), caribou (12.2.3), and wildlife and wildlife habitat (13.2.3), and DAR S15 Cultural Aspects.

The issue is whether the Developer has *adequately* incorporated traditional

knowledge in its assessment of the Project’s impacts on aboriginal rights and environment; and whether the conclusions reached by the Developer are sanctioned by traditional knowledge research based on a sound methodology.



## 1.2 Developer’s Conclusion

DAR 7.6.2 (Air Quality Assessment), 8.7.2 (Water Quality and Quantity), 9.6.2 (Fish and Fish Habitat), 11.6.2 (Vegetation), 12.6.2 (Barren-Ground Caribou), and 13.6.2 (Wildlife and Wildlife Habitat), conclude that the Project will have no significant impacts on the respective VCs. 15.4.4.3 (Culture) also concludes low impact on culture by the Project.

## 1.3 NSMA’s Conclusion

Accepting the Developer’s conclusion would imply accepting the methodology by which the Developer reached the conclusion. NSMA argues that the Developer’s process of incorporating traditional knowledge is fraught with short-cuts and inconsistencies, and ultimately fails to meet the expectations set out by the MVRMA and the Review Board precedencies.

NSMA concludes that, due to a lack of application of diligent research

methodology on the incorporation of traditional knowledge, conclusions on many of the VCs are unsupported, and therefore, at best, are inconclusive.

Failure to incorporate traditional knowledge also entails that, should the Project proceed, it will have significant impacts on aboriginal cultures, owing to intricate and inseparable relationships between traditional knowledge, culture, and general well-being of aboriginal peoples.

## 1.4 Rationale and Recommendations

### 1.4.1 Legal Requirements to Include Traditional Knowledge in Environmental Decision-Making

Incorporation of traditional knowledge is a value entrenched in MVEIRB's EA mechanism. MVRMA 115.1 states that MVEIRB "shall consider any traditional knowledge and scientific information." (MVRMA 115.1, emphasis added) This is reiterated in the Review Board's Guidelines for Incorporating Traditional Knowledge:

*"[I]n order to ensure that aboriginal cultures, values and knowledge play an appropriate role in its decisions, the Review Board is committed to fully consider any traditional knowledge" (P4, MVEIRB 2005)*

The incorporation of traditional knowledge in the EA is also a "requirement set by land claims agreements in the Mackenzie Valley region of the Northwest Territories." (P8, MVEIRB 2005) Further, the standard of "incorporation of traditional knowledge" has been set by the Review Board, during the De Beers Gahcho Kue Mine Environmental Impact Review:

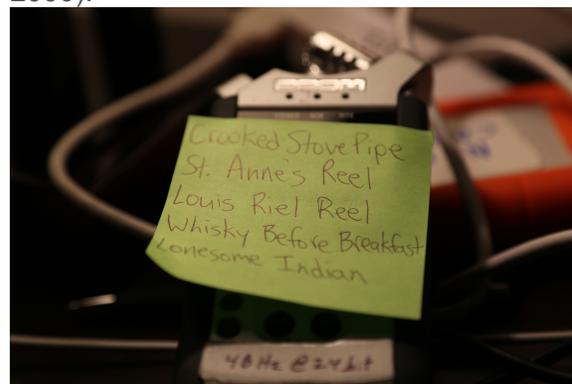
*"[T]raditional knowledge made available to the Panel in relation to the analysis of the potential impacts of the Project has been given equal weight to western scientific information." (P38 MVEIRB 2013, emphasis added).*

NSMA reiterates this emphasized section: traditional knowledge and science must be given equal weight considerations in the environmental decision-making processes under the MVRMA.

### 1.4.2 Traditional Knowledge as an Integral Component of Aboriginal Cultures

It is important also to emphasize that traditional knowledge is inseparable

from cultural integrity of aboriginal peoples. In Review Board's definition of traditional knowledge (P6, 2005), "[v]alues about the environment" is described as a component of traditional knowledge, and: "Aboriginal spirituality and culture plays a strong role in determining such values" (*ibid*, see also Zaph 2005, Kurien 1998, and Turner *et al.* 2000).



In other words, mis-use, ill-use, or non-use of traditional knowledge is not only a lost opportunity to gain deeper understanding of the environment and infringement on aboriginal intellectual property rights<sup>1</sup>, but it also implies degradation of the integrity of aboriginal cultures.

### 1.4.3 Traditional Knowledge Research Method - An Overview

Concerns were heard during discussions that subjecting traditional knowledge to a systematic analysis may be inappropriate, as traditional knowledge is a narrative knowledge that is context-specific. It is an apt concern if one interprets "analysis" narrowly as a statistical analysis of results from controlled experiments. NSMA is pleased to point out, however, that there are a variety of systematic TK research methods that are widely used in natural resource management around the

<sup>1</sup> This itself has a significant implication to the conclusions reached by the Developer, as inadequate consideration of traditional knowledge implies inadequate assessment.

<sup>2</sup> NSMA represents those indigenous

world. See for example Gagnon and Berteaux (2009): in this traditional knowledge meta-analysis they discuss how temporal and spatial scales influence practicability of integrating traditional ecological knowledge and ecological science. Both knowledge are subjected to processes of data-collection, analysis, and validation. For example, with the Inuit traditional ecological knowledge, they;

*“analyzed the English transcripts of the interviews by codifying segments of the transcripts according to the topic(s) they covered, using both deductive...and inductive...coding”*

and, they also

*“digitized and georeferenced all the spatial information to produce comprehensive maps.”*

More importantly, the researchers went back to the community for validation by the community members (Gagnon and Berteaux 2009). Of course, not all traditional knowledge can or should be digitally rendered into a pixel on a map. There are metaphors, values, and even manners of speech that are a part of traditional knowledge. It is when the researcher, in the process of extracting what is “legible” to the Governments and scientists, silence these components that the power of the knowledge and the knowledge holders are stripped away from them.

This, however, is not an insurmountable barrier for incorporating traditional knowledge, nor is it a reason not to analyse it. Simple matter is the iterative process of consultation that will build trust, refine analysis, and maintain context (see also Usher 1996, and the Review Board 2005).

#### 1.4.4 Traditional Knowledge in MVRMA - Precedencies

Failure to incorporate traditional knowledge in environmental decision-making is neither new nor limited to this particular project (Ellis 2005). NSMA raised the issue during De Beers Gahcho Kue Mine Environmental Impact Review (EIR0607-001) (NSMA 2013):

*“While one would never presume to have adequately involved ‘engineering knowledge’ in the construction of a mine by simply inviting some engineers to an occasional site visit or meeting, this is often how Traditional Knowledge is ‘incorporated’ into the design and implementation of monitoring plans and programs. Likewise, the knowledge of aquatic biologists on the status of an aquatic system is not obtained by inviting them to occasional workshops.” (P11, NSMA 2013)*

In its Report of Environmental Impact Review for EIR0607-001 (MVEIRB 2013) (De Beers Gahcho Kue Mine), the Review Panel recognized the concerns raised by NSMA, and issued a specific Measure to mitigate the impacts on North Slave Métis culture. The panel agreed:

*“...with aboriginal parties that it is particularly important that the developer include traditional knowledge and direct on the ground monitoring by aboriginal people during the construction and operations phases of the mine. In this way, behavioural information on wildlife and particularly caribou can be gathered by people who have traditional and cultural ties to the landscape. Practical use of traditional knowledge in this manner can lead to operational changes at the mine and minimize both project-*

*specific and cumulative impacts on caribou.” (P133, MVEIRB 2013)*

NSMA reiterates that this Measure was issued in response to the NSMA’s concern. In particular, NSMA argued that De Beers Gahcho Kue mine’s allegation that it adequately incorporated traditional knowledge was a fictitious misinformation (P11, NSMA 2013).

### 1.4.5 Incorporation of Traditional Knowledge by DDEC

Throughout this EA process (EA1314-01), Parties have raised questions about the ways in which DDEC incorporates traditional knowledge. To name a few: DAR-DFO-IR-03, DAR-IEMA-IR-37, DAR-KIA-IR-60, 70, 76, and 77, DAR-Tlicho-IR-17 and 18 generally shared the theme of “how is traditional knowledge incorporated?” And generally, DDEC’s responses are that:

- a. Ongoing communications with specific groups;
- b. Some specific location information (caribou road crossing,

- grizzly habitat, fish spawning locations); and
- c. Community visits, workshops, and site visits

are utilized and deemed adequate for the purpose of this EA. The round of IRs evidently failed to clear the fog of confusion, since as recently as on June 25, 2015 ([PR#459](#)), aboriginal representatives asked what were essentially the same questions; “what have you done with the traditional knowledge, and how?”:

*Johanne Black (YKDFN): “...[W]e fear that DDEC is not listening and using the information. Any TK that provided by the YKDFN, have you used it? If it was not used why? Is this documented?”*

*Rick Bargery: “DDEC has done workshops, there are documents. DDEC also does various site visits to bring elders up and we have tried to incorporate TK in a numbers of ways. I cannot speak to where TK information has not been used.” (P17)*

Again, DDEC lists site-visits, workshops, and management documents that have some sections describing traditional knowledge, as examples of incorporation of traditional knowledge.

Notably, neither the informant (YKDFN) nor the researcher (DDEC) know what happened to traditional knowledge that was not used. Similarly;

*Patrick Simon: “There should be a little more guidance to procedures then(sic) just lumping them together and say we have respect. We want to know about these things or know that there is some sort of process in place so that the information that resides with you that we have shared and use and spoken to only for that and not found elsewhere where there is no relevance.” (ibid)*

Here DKFN representative expresses discomfort with the way the

gathered traditional knowledge is handled by DDEC.

*Johanne Black: "We all know what data is and that certain data has ownership, we (YKDFN) want ownership of TK information we provide. We want to manage it but we can't without your help. We would like a running list of TK that you have obtained from each group. Otherwise we don't know if you are using what we have provided the way we want it to be used."*

*Rick Bargery: "DDEC can look at this. I don't know how much work that entails but we will see if there is any way we can organize it in a way that it is useful." (ibid)*

Two issues are raised by YKDFN, 1) intellectual property rights, and 2) how traditional knowledge did or did not inform the Project. Again, the participant (YKDFN) and researcher (DDEC) clearly have not established a relationship of trust that is essential to traditional knowledge research. Worse, DDEC hints at the fact that such undertaking -- keeping a list of components of traditional knowledge that were used or not used -- maybe too onerous a task to the company.

This is a clear evidence that DDEC places such little weight and respect to traditional knowledge that NSMA and other aboriginal parties share with the company:

Just how much disparity is there between the dollars spent on science and dollars spent on traditional knowledge? To indicate that the cost of traditional knowledge research is inhibitive -- and only to keep track of them -- is nothing but an insult to the keepers of the knowledge, and the people whose *survival*, not bonuses, depended on such knowledge.

Finally, when the NSMA representative pressed DDEC why there was no systematic methodology to implement traditional knowledge that DDEC claims to be gathering and using for decades, DDEC responded:

*Shin Shiga: "Does DDEC have method for systematic analysis of TK data? Is there a single database or not?"*

*Harry O'Keefe: "Short answer of that-no. It was provided to me in a specific context and if I analysis[sic] it I might lose the context. TK is something that cannot be taken from someone, you have to work on it for something that can be given. However, DDEC can work on some way of storing." (ibid)*

*Charles Klengenburg: "If you listen long enough you will hear traditional knowledge." (P18)*

To recap, throughout the EA, aboriginal parties have raised the following general issues about the way in which traditional knowledge is (un)incorporated:

1. Uncertainty about protection of intellectual property rights;
2. Uncertainty about whether and how traditional knowledge is incorporated in

the environmental management by DDEC; and

3. Uncertainty about how traditional knowledge is stored.

Similarly, DDEC's responses have generally been that:

1. DDEC will continue to work with the aboriginal parties;

2. DDEC has hosted many site visits, incorporated some specific suggestions, and held many workshops; and
3. DDEC has not been storing traditional knowledge, but it can.

In NSMA's view, the above summary amounts to the following:

1. Despite seventeen years of operation, DDEC (formerly BHB Billiton) has yet to make traditional knowledge research agreement with NSMA and others, to enable effective sharing of traditional knowledge with the Developer;
2. With the environment department larger than any other diamond mines in the Northwest Territories, and a full-time traditional knowledge coordinator, DDEC has failed to establish a consistent traditional knowledge analysis method;
3. DDEC cannot even demonstrate that it has stored traditional knowledge that was shared by the aboriginal parties; and
4. NSMA is extremely uneasy to accept "if you listen long enough you will hear traditional knowledge" concept -- we have waited seventeen years, how much longer should we wait?



#### 1.4.6 "Any Traditional Knowledge That is Made Available"

For the record, the Review Board can only consider evidences, be it Scientific or traditional knowledge that are made available to it during the course of EA. It is worthwhile noting that the burden of proving that the Project does not have significant effects is with the Developer. NSMA does not have financial nor human resource capacity to provide adequate traditional knowledge, without the financial contribution from the Developer. For the purpose of this EA, the Developer has not provided support

for NSMA to provide traditional knowledge beyond per diems and honoraria to attend workshops in Yellowknife. If, as I argue, evidence based on traditional knowledge that are so far made available to the Review Board is inadequate, this is not due to the lack of effort by the NSMA.

#### 1.4.7 Recommendations to the Review Board

Through the EA, it has become clear to NSMA that DDEC is also at a loss with how to incorporate traditional knowledge adequately. To resolve the gap between aboriginal parties and the

Developer, NSMA recommends the Review Board to direct the following Measures and Suggestions:

##### Measure 1:

The Developer shall establish an expert panel of traditional knowledge researchers. This panel will work with the Developer and traditional knowledge holders to develop a sound traditional knowledge research protocols that will contribute to a better environmental management at Ekati Mine. Agreed upon research protocols shall be implemented prior to the submission of application for Type A Water Licence for the Jay Project.

##### Measure 2:

The Developer shall enter into a traditional knowledge sharing agreement with the Aboriginal Parties within six months of the issuance of the Report of EA. The expert panel described in Measure 1 should assist the Developer and Aboriginal Parties in this process.

##### Measure 3:

The Developer shall provide ongoing support, in kind or financial, to the aboriginal parties in order that they can manage and keep track of traditional knowledge that is

relevant to the Project. This traditional knowledge will be shared with the Developer, in accordance with the sharing agreement (Measure 2), and used for environmental management at the Ekati mine.

Suggestion 1:

The Developer will place equal weight on scientific knowledge and

traditional knowledge when making environmental management decisions.

Suggestion 2:

To support Suggestion 1, the Developer will make an investment in traditional knowledge research and implementation that is comparable to investment in science.

## 2. Ekati Socio-Economic Agreement

### 2.1 Issue

*“Every revolution evaporates and leaves behind only the slime of a new bureaucracy” F. Kafka*

Affected VCs in this section are Employment and Economy (socio-economic and employment), and Human Health. However since these are inseparable from Culture and Traditional Land Use, considerations must be given to those VCs in reviewing this section.

The issue is whether the Socio-Economic Agreement between the GNWT and DDEC forms an effective part of monitoring and mitigation of social-economic and human health impacts by the Developer.

### 2.2 Developer’s Conclusion

Table 14.10-1 of DAR showcases the Developer’s conclusion that the Project will have a significant positive impact, while negative impacts will be non-significant to the communities.

The Developer generally concludes, despite acknowledgement of uncertainty, citing Gibson (2008, DAR 14-100), and therefore implies, that Ekati Socio-Economic Agreement (SEA) is an effective tool for monitoring and mitigation of impacts on VCs discussed in this section.

### 2.3 NSMA’s Conclusion

Ekati Socio-economic Agreement is the only legal agreement that holds the Developer accountable for the socio-economic impacts it may incur to the communities. It provides for specific requirements to monitor fourteen defined indicators to track the impacts of the mine, as well as the effectiveness of the programs. The GNWT also commits to consultations with the affected communities.

NSMA is of the view that the parties to the Ekati Socio-Economic Agreement, in particular the GNWT, has fallen complacent, and has not fulfilled the requirements and expectations set forth by the SEA.

A lengthy discussion during the Technical Session on April 23, 2015 ([PR#355](#)) about the SEA left aboriginal parties’, especially YKDFN and LKDFN representatives, questions unanswered, and concerns unaddressed. NSMA concludes that the lack of effective monitoring of the impacts on VCs, considering their intimate links to culture and traditional land use, poses a significant threat to the present and future well-being of North Slave Métis people.

### 2.4 Rationale

There are broadly two reasons why NSMA believes the current SEA is inadequate to ensure that the rights and well-being of the North Slave Métis people are protected. First, it has become apparent through the EA that many components of the SEA have not been followed through, or are impossible to verify whether they were effective ([PR#454](#)) Second, even if the SEA was fully implemented, the provisions in the Agreement do not allow for identification nor mitigation of some of the potential socioeconomic impacts from the diamond mines.



## 2.4.1 Problem with Implementation

To begin, one despondent example is found in the GNWT response to NSMA IR#2 in the second round of IRs ([PR#454](#)). NSMA asked for:

*“...the outcome of the consultation meetings between GNWT and the Boards, and how they improved the results. Please also provide specific data, consultations outcome, and initiatives undertaken on “establishment of day care programs” (5.2.6) and prevention of spousal abuse (5.2.7).” (ibid)*

Objectively reading our own question, it is clear that the first part of the question is asking about a procedural aspect of the SEA implementation.

First of all, GNWT could not specify who the “Boards” were. The “Boards” being the primary consultative partner in the SEA, NSMA is at a loss who the GNWT is consulting. The larger problem, however, is that, in response to the primarily procedural question from NSMA, GNWT provided a long list of program names, and no more. Gibson (2008) had just the poignant observation to make: Speaking exactly of the socio-economic impacts of the diamond mines, she writes “every request for mitigation is answered by an existing program” -- by the Governments (P265)

That there are programs to address concerns, do not address our concerns.

After the initial round of Information Requests, a long discussion pursued during the April 23, 2015 Jay Project Technical Session ([PR#355](#)). Todd Slack (YKDFN) and Peter Unger (LKDFN) took turns in questioning the Developer and GNWT to understand:

1. How are principles of adaptive management (iterative process of

monitoring and management) practiced; and

2. Who is accountable?

In short, procedural clarity and accountability are what they asked, that they never got. Below are some examples of responses that are illustrative of the inefficacy of the SEA (or the implementation of it):

*P169 Gaeleen Macpherson: “...As you can imagine, I mean, to -- to focus on fourteen (14) key areas every year and make improvement in each of those areas would be difficult.” ([PR#355](#))*

Every year, DDEC measures about fifty-six aquatic variables for AEMP programs (P2-9, DDEC 2015). DDEC of course has many other monitoring programs, such as wildlife and air, with their own indicators. To say fourteen variables are too many is indefensible. Note especially that Peter Unger asked for “how

the indicators are going” (P168, [PR#355](#)), not to demonstrate the improvements.

Todd Slack asked a series of questions with regard to

improvement with employment statistics, and the outcome of the government programs:

*Todd Slack: “...you mentioned that the GNWT had undertaken a number of initiatives to improve the rate of hiring... Can you give us... some description of what these initiatives have been and whether you’re seeing real results out of that.” (P192)*

*Dana Heide: “... We have taken track of two fold... and this is all available online on the GNWT website. We have implemented a framework and*

*“Every request for mitigation is answered by an existing program, inappropriate or empty as it may be” – Gibson (2008)*

*an action plan that will address both the attendance issues with..." (P193)*

Dana Heide goes on to list a number of programs and what the GNWT is "moving forward" with (according to Dana Heide, GNWT is "moving forward" with three initiatives). (P169) In response to Todd Slack's request for the "real results" of the SEA initiatives that have been presumably ongoing for seventeen years, in different shape and forms, the GNWT provided a list of framework, action plans, and programs they are "moving forward" with. Still not hearing anything of the outcome, Todd Slack moves forward:

*Todd Slack: "... the idea is that you're responding to the monitoring and you are adaptively managing. But I -- I just don't see any evidence of that. Can you point us to any -- just one last chance. Like, is there anything we can look at were[sic] we're going to see this?" (P202)*

*Deborah Archibald: "As I said...the socioeconomic agreement sets up the opportunity for annual meeting -- the annual reporting by DDEC and the annual meeting with -- with DDEC... That is what the agreement provides for." (ibid)*

The SEA in fact provides for more than the annual reporting and meeting. The SEA Recital H. reads:

*"It is in the interests of the Parties to jointly provide for a framework to ensure that training, employment and business opportunities are made available to Northern Residents, protect and promote the wellness of any affected peoples or community, and to minimize any adverse social impacts of the Project" (Ekati SEA 1996 [PR#414](#))*

To reflect the spirit of Recital H. a number of commitments and requirements

are provisioned throughout the agreement. To list a few:

- In Section 4, DDEC agrees to quite a few items related to employment and training, including agreement to "take all reasonable steps, acting in good faith, to employ, pursuant to a preferential hiring process, the greatest possible number of Northern Residents in the project" (SEA 4.2.2)
- Section 5 is about social issues. Here, GNWT agrees to "consult with Boards, communities and organizations to review the results of the health and wellness report on how to improve the results" (SEA 5.2.4)
- Section 8 is wholly dedicated to monitoring of impacts.

NSMA reads from the SEA that it is entirely reasonable to expect the GNWT or DDEC to be able to provide the record that, at least they tried to measure the effectiveness of the programs. Thankfully, Rick Bargery "understand(s) Todd's point" (P203) about the importance of monitoring and feeding it to management decisions; however he quickly steers the subject away from well-being of the aboriginal peoples and socio-economic indicators, to specifics about employment and business contract opportunities (which are important but not more so than other socio-economic indicators).

At the end of two rounds of Information Requests and two sets of Technical Sessions, NSMA is still without comfort that the provisions in the SEA will be implemented. In fact, it appears that the GNWT has openly decided that it would not fulfill the requirements in the SEA.

Despite of it all, "GNWT is confident that collaboration with Ekati will continue to benefit NWT residents." ([PR#304](#) GNWT response to YKDFN IR 17) NSMA has already shown the fragile ground on which the GNWT confidently "moves forward".

### 2.4.2 Problem with SEA Provisions

Previously NSMA pointed out how Ekati SEA lapsed into the realm of bureaucratic apparatus, by way of misguided implementation practices.

NSMA is also concerned, however, that even if the SEA was fully and properly implemented, it leaves behind many gaps into which our community's most vulnerable may fall victim to. These points have been acknowledged by both the GNWT and DDEC, and cautioned by outside scholars (see for example Gibson 2008, or Bell 2013).

DDEC argued during April 23, 2015 Technical Session (P254), that because causal relations cannot be drawn between the socio-economic changes and the Project, it is impossible to accrue any responsibilities to the Project. NSMA concurs that this maybe the case: the existing research and monitoring of the communities will not be able to detect adverse impacts, until the impacts are so large that they show in macro-scale indicators.

For example, in the first round of Information Requests, the Developer responded to Tlicho Government request for "more information on how the Project may continue the trends...related to crime, suicide, family composition..." ([PR#320](#) DDEC response to Tlicho IR 16) as follows:

*"Suicide (Trend: no clear trend)*

- *Suicide rates have been higher in small local communities than in Yellowknife since 2003/2005.*
- *These rates should be interpreted with caution. For example, the number of suicides in Behchoko, Dettah, Gameti, Lutsel K'e, N'dilo, Wekweeti, and Whati fluctuated between 0-2 per year between 1992 and 2009. This makes it difficult to identify any trends from the data or to*

*infer a relationship between suicides and mining in the NWT..."*

Surely, one would hope that the governments, industries, and the communities would act before the suicide rates in small communities show a steady increase with the expanding extractive economy; that is why we have tools such as the SEA. More importantly, two suicides in smaller communities are, in any communities in fact, too many. No matter how statistically insignificant those numbers are, those lives meant everything to some people; and without a doubt placed a significant social impacts to the communities where it was experienced.

Large agents of social change such as the Developer and GNWT have social responsibilities, not least because of the SEA, to act preventatively on negative social changes. In this example of suicides, NSMA is wholly unsatisfied that the "monitoring", or the exercise of trying to explain the cause of the suicides, so that in the future they could be prevented, should stop at statistical analysis.

Another example, one that the Developer cites from Gibson (2008), is the investigation of alternative pathways (DAR 14-100). Just because a correlation is observed (e.g. higher income and higher fur-harvesting), it does not mean there is a causal relationship (i.e. the reason may be the higher fur prices rather than extra income). In response, the Developer provides two reasons why this does not affect the assessment outcomes:

1. Jay Project is an extension of the existing Ekati Mine, and does not change the baseline conditions;
2. DDEC will consider potential initiatives related to community health and well-being to address any negative effects of the Project regardless of the study findings. ([PR#320](#) DDEC response to Tlicho IR 14)

NSMA is not sure why the Developer compares the health and well-being effects of the Project against the baseline, rather than the Base Case, as it does with GDP, employment, and income indicators. Besides that, however, is the real question NSMA struggles with: Why, despite clearly increasing GDP, income and employment rate over the years -- three Holy Grail indicators of progress in the modern society -- are many of the health and well-being indicators either worsening or stagnating? For example, despite more than 50% average income increase from 1991-2011 in NWT, police reportable crime increased by nearly 60% between 1995 and 2012. Why, despite the Developer's initiatives that include financial management training and substance abuse prevention programs, do our members continue to struggle with devastating effects of them? How are the Developer, as well as, but less so than the the GNWT, responding to these questions in order to truly improve the lives of our community members?

These are crucial questions that are not addressed by the SEA, which, to reiterate, is the only tool available to us, to hold GNWT and the Developer accountable.

## 2.5 Conclusion and Recommendations

The Ekati SEA, the only legal tool to hold the Developer and the GNWT, is ineffective. Implementation of the agreement has been inadequate to say the least, and the agreement itself leaves many gaps that need to be closed.

NSMA is of the opinion that the parties to the Ekati SEA should honor the agreement, and implement it fully. If the parties agree that the provisions in the agreement are no longer appropriate for the needs of the communities, and the society at large, then the agreement should be amended to reflect this view. NSMA is

indifferent between these two. NSMA does request, however, that there be additional commitments from the GNWT and the Developer to address those questions and concerns currently left outside the scope of the Ekati SEA. Therefore, NSMA recommends the Review Board to direct the following Measure and Suggestions:

### Measure 4:

The GNWT and the Developer shall hold a special Ekati Socioeconomic Agreement Implementation Meeting ("the Meeting"), to discuss and agree on whether they will fully implement the agreement, or amend the agreement. The GNWT and the Developer shall consult the impacted communities prior to the Meeting, in order to reflect their concerns in the implementation strategy or the amendment. The GNWT and the Developer shall invite the impacted aboriginal parties to the Meeting as observers. The Meeting shall be held prior to the issuance of Type A Water Licence for the Project.

### Suggestion 3:

The GNWT and the Developer, together with the impacted aboriginal parties, will collaboratively work towards developing a research, monitoring, and intervention program(s) that will address those aspects of socioeconomic impacts that are not accounted for in the Ekati SEA. The GNWT and the Developer should recognize that there are robust and useful qualitative research methods that can be employed.

### Suggestion 4:

The GNWT should not answer requests for monitoring and mitigations by a list of existing programs and planned initiatives, without accompanying data that demonstrate effectiveness of those programs and initiatives.

## 3. Resilience and Uncertainty

### 3.1 Issue

The VCs for consideration are Traditional Land Use, Employment and Economy, and Human Health.

The issue is that there are specific conditions NSMA members experience, and they need to be considered in assessing the impacts of the Project. These include the lack of certainty around the NSMA members' claim to their land (Land Claim), their ability to self-determine (Self-Government), and consequently, their future as an Aboriginal people.

This section is directed mostly to the Government of Canada and GNWT.

### 3.2 Developer's Conclusion

The Developer has held NSMA community meetings and IBA meetings, where NSMA-specific concerns were discussed. Some measures have been taken within the scope of the IBA.

However, the DAR nor the subsequent discussions within this EA process touch on the specific issues NSMA members are exposed to. Conclusions have been drawn without these considerations.

### 3.3 NSMA's Conclusion

Uncertainties surrounding the NSMA members, with regard to the claim to their ancestral lands and ability to self-govern, underpin every assessment of impacts and decisions NSMA makes. NSMA is uniquely exposed, unjustly, to the whim of the Crown. The ramifications of the uncertainties permeate throughout this EA process, and amplify the Project's impacts on the NSMA members. Every decision made on and near the NSMA traditional lands, prior to the establishment of certainty, poses significant threats to the future of NSMA members, and their aboriginal rights.

### 3.4 Rationale and Recommendations

The members of NSMA comprise the indigenous Métis people in the Great Slave Lake area. They share unique ethnic history, heritage, and cultural identity that make them a people with aboriginal rights to the area<sup>2</sup> (Gwynneth, date u/k).

The rights to the land, cultural integrity, and identity (self-determination) are essential constituents of NSMA members' well-being. Yet, to date the NSMA members are still struggling for a proper recognition by the Government of Canada. This has direct implications to the impacts that the Project will incur on the NSMA members.

There have been a number of sociological, anthropological, and socio-economic studies about aboriginal peoples in the Mackenzie Valley. Though many of them do not focus on the NSMA members *per se*, they all illustrate the situations where the NSMA members find themselves.

Gibson (2008), for example, argues that:

*“(Community) [r]esilience is enabled through self determination: at this point in time, political self determination is only achievable within Canada for aboriginal people through negotiation of modern land claims and governance agreements. (P255)*

where “resilience” is defined as:

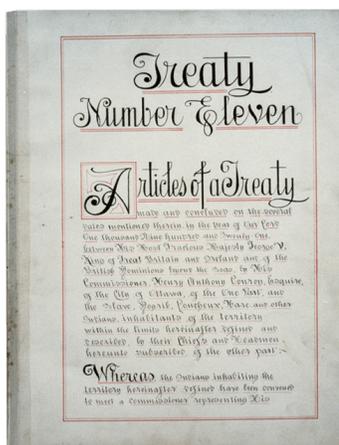
*“Resilience is an ability to become or remain strong drawn from the ability to be self determining and in relationships of reciprocity” (Pviii)*

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<sup>2</sup> NSMA represents those indigenous Métis people who primarily assert their rights in the area north of Great Slave Lake.

Not only does NSMA have no modern land claims or governance agreements, we are not even invited to the negotiation table by the Government of Canada. Resilience of NSMA community, then, is “un-abled”, leaving the members more susceptible to negative social impacts by large socio-economic changes. On the flip side of the same coin is Bell (2013). Bell discusses how the development of the diamond mines in NWT did not face “substantial local opposition” from the aboriginal authorities (P89). Recognizing difficult negotiations and constant contestations<sup>3</sup>, she nonetheless argues that aboriginal authorities were relatively receptive of the mines, because:

*“[N]ew projects bring much needed development and empower local peoples to become self-sufficient. In the case of the NWT, Indigenous*



*cultural and political struggles were not treated as oppositional to development; on the contrary, they were mobilized, on many sides of the debate, as motivations for development. Specifically, mining was seen as a way to expedite*

<sup>3</sup> See also Gibson (2008) for detailed discussion of how IBAs are hard-fought and “won through negotiation by leadership and commitments maintained through constant vigilance.” (P254, Gibson 2008)

*indigenous self-determination.”*  
(P89, Bell 2013)

In other words, a part of the reason why NSMA signed the IBAs was “to expedite indigenous self-determination”; and we did so precisely because such self-determination was “un”-abled by the “un”-recognition of aboriginal rights by the Governments of Canada and Northwest Territories.

This significant power imbalance, where NSMA is unjustly placed in a situation where we are forced to accept the development’s impacts on unequal terms, including the Jay Project, in order to maintain the ability to exist, as a self-determining people, must be recognized and remedied before this EA process is viewed as an adequate accommodation and consultation with NSMA.

NSMA must also emphasize that this uncertainty carries real, foreseeable implications in the assessments of the Project’s impacts on our members. NSMA has no ability, for example, to deliver a culturally appropriate curriculum in schools, or provide a safe place for Métis children to nurture their cultural heritage or learn their language. In most socio-economic assessments, NSMA members are not even assessed as a distinct demographic -- they are included in the general Yellowknife population without any justifications. As Hodgson writes (2002):

*“[T]he pursuit of their ideals and goals is predicated not just on protecting their territories and resource base but also on controlling the education and socialization of their children, improving their health and social welfare, ensuring the continuity of their languages, and protecting and maintaining their cultural knowledge and institutions.”<sup>4</sup>*  
(Hodgson 2002, 1041)

<sup>4</sup> See also Nadasdy (2003) for how the discursive space imposed by the

All these conditions, or lack thereof, affect and amplify the negative impacts resulting from the Project; and in certain ways, more so than experienced by other aboriginal peoples, who are at a more advanced stage in their land claim negotiations.

For these reasons, NSMA recommends the Review Board to consider the following Measures and Suggestion.

Measure 5:

In order to mitigate significant and detrimental impacts on NSMA members' aboriginal rights, Canada shall expediently initiate the process of strength of claim assessment with the NSMA.

Measure 6:

The responsible minister (the Minister of ENR, GNWT), shall take into considerations the unique vulnerability that NSMA experiences, when delivering his or her decision on the EA.

Suggestion 5:

The Developer and GNWT should collaboratively or independently conduct socio-economic impact assessment of the Project specifically for the NSMA members. The Developer or the GNWT may instead provide support for the NSMA to conduct its own socio-economic impact assessment.

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bureaucracy and science mutates the cultures of oft marginalized "others".

## 4. Greenhouse Gas Emissions

### 4.1 Issue

All VCs are threatened by the rampant use of fossil fuels by large scale industries, and the resulting effects of climate change.

The issues are whether; a) the Developer is acting on this issue in a socially and environmentally responsible manner, and b) the Developer should comply with the targets set out in the NWT Greenhouse Gas Strategy 2011-2015 (GNWT 2015).

### 4.2 Developer's Conclusion

The Developer has been actively reducing GHG emissions from the operations of Ekati mine. The Developer lists many initiatives, including no-idling campaigns, on its 2012 Environmental Impact Report, and during the April 2015 Technical Sessions ([PR#359](#)). The Developer also has an



internal annual fuel use reduction target (5% reduction in fuel use, and two million dollars in savings) ([PR#448](#) DDEC response to NSMA IR 1).

The Developer dismisses alternative energy sources, including solar and wind, as viable sources, citing cost and technological barriers ([PR#313](#) Appendix F Information Request Round 1).

It is the Developer's view that the ongoing initiatives sufficiently satisfy the corporate social and environmental responsibilities, and therefore compliance with the NWT Greenhouse Gas Strategy 2011-2015 is not warranted.

### 4.3 NSMA's Conclusion

It is our view that the cumulative effects of greenhouse gas have long surpassed an acceptable threshold, and no additional net positive GHG emissions are good. Effects of climate changes are felt, and communities are impacted. There are ample scientific and traditional knowledge that demonstrate the effects and impacts of climate change in the North (see for example Stroeve *et al.* 2007; Krupnik & Jolly 2002; and Hoyer *et al.* 2007).

As one of the leaders in the NWT economy, and also the leading emitter of GHG, the Developer has a moral obligation to invest in achieving the compliance with the NWT GHG Strategy. Failure to do so will have significant impact in all VCs that are affected by climate change.

### 4.4 Rationale and Recommendations

Climate change, due to the steady increase in GHG emitted from the combustion of fossil fuels, is affecting the livelihood of the NSMA members. And it is not going to get better: "Rapid growth in the mining and natural gas sectors could result in emissions from the NWT increasing to three times higher than they are now during

the next two decades.” (P10, GNWT 2011). Predominance of permafrost, winter ice, and climate modelling predictions mean the effects of climate change is felt more readily in the NSMA traditional territories than the south of NWT (Stroeve *et al.* 2007, and Hoye *et al.* 2007). Consequently, the GNWT also states that:

*“Scientists project temperatures will continue to warm because of climate change caused by the burning of fossil fuels and other sources of greenhouse gas emissions. Regardless of global efforts to reduce emissions, the NWT will need to continue adapting to climate change impacts.”* (P3, GNWT 2008).

World’s leading scientists and United Nations urge actions (United Nations 2014)<sup>5</sup>, the GNWT urges actions (Tech Session [PR#359](#)), the public urges action (Northern Journal 2013), and the aboriginal parties have demanded actions through this EA. There is a clear target set by the GNWT. They even did part of the Developer’s homework ([PR#455](#)). DDEC continues to disappoint the implicated parties, despite its own acknowledgment of the effects of climate change (e.g. citing Wormworth and Mallon 2006, in DDEC 2012).

Climate change poses an imminent and serious risk to the sustainability of the Northern livelihood. Traditional Land Use and Cultures are especially susceptible to rapid change in climate (Ford *et al.* 2008, Duerden 2004). This goes without saying that barren-ground caribou, the livelihood of NSMA people, will also be significantly impacted by the change in climatic conditions (Vors and Boyee 2009).

The failure to take initiatives in changing the energy regime, by such leading industry partner as the DDEC, sends a signal across the country that inaction continues to be acceptable. NSMA cannot stand idly by and allow the

Developer to trammel on the modest<sup>5</sup> guideline set by the GNWT.

For these reasons, NSMA requests the Review Board to direct the following Measures and Suggestions:

Measure 7:

The Developer shall conduct a feasibility study on renewable energy technologies, in collaboration with the Arctic Energy Alliance. The Developer shall enter into this study in a view that, technically feasible, and economically achievable alternative should be adopted and operationalized.

Measure 8:

Alternatively to the Measure 1, every year, the Developer shall contribute 10% of the cost-saving from its various energy use reduction campaigns towards GHG reduction initiatives in the NWT. This may be implemented through establishment of a fund or trust, co-managed by the Developer, the GNWT, aboriginal parties, and a representative from the public (e.g. an environmental NGO).

Suggestion 6:

The Developer should also study the effectiveness of participating in Cap and Trade or other carbon off-setting programs in a view of achieving zero net emission of GHG from the operation of the Ekati mine. The study should be made public.

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<sup>5</sup> IPCC recommends 40-70% cut of GHG emission by mid-century to avoid catastrophic effects of the climate change. In contrast, GNWT is recommending a modest introduction of renewable energy. (Reuters 2014)

## 5. Cumulative Effects on Caribou

### 5.1 Issue

The affected VCs are Caribou, Traditional Land Use, Culture, Socio-Economics, and Health and Well-being.

The issue is whether the Project constitutes a significant effect to caribou; specifically, the Bathurst herd of the barren ground caribou.

### 5.2 Developer's Conclusion

Estimated negative effects on the caribou by the Jay Project are a 0.15% decline in pregnancy rates and a 0.3% decline in calf survival at the Reasonably Foreseeable Development stage (PR#132 DAR S 12.4.2.3.1). Based on this projection, the Developer concludes the residual impact of the Project on barren ground caribou is negligible and insignificant.

### 5.3 NSMA's Conclusion

NSMA does not agree with to the Developer's conclusion. Significant effects have already been experienced by the NSMA members for at least two years, since the harvest restrictions have been applied by the GNWT. The Bathurst herd does no longer have an ecologically effective population-base; or at least that is how NSMA understands is the motivation behind the emergency measure taken by the GNWT ENR Minister Miltenberger in 2014-2015 hunting season.

Any negative effects on Bathurst caribou at their current state of rapid decline is unacceptable. For perspective, fifteen combined ceremonial harvest quota were issued to for the aboriginal people, who have traditionally been relying on the Bathurst caribou for time immemorial. As

far as NSMA is aware, none of the quota was used.

It is NSMA's view that the Developer has not done (or proposed to do) enough to mitigate, remediate, or offset the Project's impacts on barren ground caribou. The Developer also used the significant threshold that is disagreeable from the point of view of NSMA.

### 5.4 Rationale and Recommendations

NSMA understands that, based on science, the industrial activities' effects on barren ground caribou currently amounts to the following:

- Up to 40% of cows exposed to ZOIs annually (PR#305 DAR-MVEIRB-IR2-08)
- 2% decline in pregnancy rates
- 3.9% decline in calf survival (RFD 1)

To the herd that lost 95% of its population within the recent decade, these numbers are by no means trite. Frankly, what NSMA would rather be discussing, using our limited time and money, is not "how much more pressure can we put on our caribou?", but "how can we help recover their population?"

As an observer to the Conference of Management Authority, NSMA is aware that barren ground caribou will be assessed under NWT Species at Risk Act within the next 12 months. There is significant, or overwhelming, concerns from the traditional land users, the public, and the scientific communities about the general status of barren ground caribou. To conclude that the open-pit operation that moves 40 million tons of materials annually (DAR S 3.5.4), in the middle of historical caribou migration route, without sufficient incorporation of traditional knowledge, is far from palpable.

*"One has not only an ability to perceive the world but an ability to alter one's perception of it; more simply, one can change things by the manner in which one looks at them."*

– T. Robbins

In anticipation of the Developer's response; that the model is based on conservative assumptions, does not make the predicted impacts any more benign. In fact, the understanding of the mechanism of

Developer shall develop a Caribou Compensatory Off-set Plan, in collaboration with interested parties, in order to enhance the recovery of the Bathurst caribou herd. The Plan must be made public within one-



ZOI and behavioural changes of caribou is so preliminary that even more conservatisms may be warranted. As we are all aware, "conservative models" have, in the past, proven to substantially underestimate mines' impacts on the surrounding environment (MVEIRB Snap Lake Water Licence Amendment EA1314-02).

NSMA insists that the cumulative effects on barren ground caribou, namely the Bathurst herd, have already passed the threshold of significance. NSMA members already have suffered irreversible social and cultural impacts because of the declining population. In view of this, NSMA requests the Review Board to consider the following Measures:

Measure 9:

NSMA believes that it is now a time to consider off-setting of the impacts already incurred – future additional impacts must naturally be off-set. Therefore, the

year of the Report of EA, and it shall be made public. The Plan shall also be a condition of the land use permit.

Measure 10:

The Developer shall put further effort into minimizing the ZOI and the mine footprint in order to absolutely ensure the minimal impact to caribou. The Developer shall consider and appropriately implement, at minimum:

- Rerouting of Jay road, as proposed by Anne Gunn (PR#356)
- Caribou over-pass for the esker crossing of the Jay road
- Underground power lines and pipes along the Jay road
- Caribou aerial surveys to aid the better understanding of ZOI, in collaborations with the industry, government, and aboriginal partners.

## 6. Air Quality Monitoring and Management

*“Would the Chernobyl nuclear plant accident have exceeded the threshold for air quality?” Todd Slack, YKDFN*

### 6.1 Issue

The issue is whether the Developer has made a sufficient management and monitoring plan for mitigation of the Project’s effects on air quality, and its related effects on caribou and aquatic environment.

The VCs are Caribou, Air, Water, and Fish and Fish Habitat.

### 6.2 Developer’s Conclusion

DAR S 7 (P7-111) concludes that the Project’s “effects to air quality were classified as not significant.”

### 6.3 NSMA’s Conclusion

NSMA is of the view that the existing commitments from the Developer (PR#458) or the proposed Conceptual Air Quality and Emissions Monitoring and Management Program Design Plan (PR#444) satisfactorily address the dust dispersion model uncertainty, effects of dust on caribou ZOI, and the effects of dust deposition on shoal fish habitats.

A lack of adequate monitoring and management plan, especially the absence of the Developer’s commitments to adopting more conservative triggers for action levels, leaves a probable chance that the Project will have significant impacts to the VCs.

### 6.4 Rationale and Recommendations

The NSMA is concerned that the DAR predicts exceedances of NO<sub>2</sub>, PM<sub>2.5</sub>, and TSP above the GNWT Ambient Air Quality Standards in the surround environment of the Project, extending

beyond the Project’s footprint (PR#103, DAR S 7).

According to the Updated Commitments Table (PR#458) the Developer intends:

*“to apply the NWT ambient air quality guidelines (GNWT-ENR 2014) as standards or targets for purposes of air quality monitoring and management at the Project. Therefore, the fact that the NWT ambient air quality guidelines are non-legally binding, as clarified by the GNWT Department of Environment and Natural Resources (ENR) in a letter (GNWT-ENR 2015) responding to Undertaking 17 from the Mackenzie Valley Environmental Impact Review Board (MVEIRB) Technical Sessions for the Project on April 24, 2015, will have no effect on how Dominion Diamond plans to manage the air quality at the Project.”*

Despite this commitment, the Developer continues to assert that the exceedance of the GNWT guideline does not cause significant effects, and proposes to exceed the NO<sub>2</sub>, PM<sub>2.5</sub>, and TSP guidelines. NSMA believes that the prudent approach is to honor the commitment, and design the Project in a way that the activities will not cause exceedance of those values set out in the NWT Ambient Air Quality Guidelines.

The email table from GNWT ENR to the Developer (PR#492), also includes a useful and acceptable suggestion for the action levels and triggers that the Developer should adopt to avoid causing significant impacts to the VCs. The suggested approach should allow for sufficient lead time for the Project to adapt mitigation measures before the effects reach the next action level. Or the significance threshold.

For these reasons, NSMA proposes the following Measures and Suggestion to be issued by the Review Board.

Measure 11:

The Developer shall adhere to the NWT Ambient Air Quality Guideline, and recognizes that the exceedance of the Guideline will constitute significant effects to the environment.

Measure 12:

The Project shall commit to the action levels and triggers suggested by the

ENR in the email sent from Matthew Seaboyer to the Review Board on July 27, 2015 (PR#492).

Suggestion 7:

GNWT ENR should develop an enforceable air quality regulation as soon as possible.

Suggestion 8:

The Developer and GNWT, in collaboration with DDMI, should design and implement a regional dust fall monitoring program in view of its effect on caribou ZOI.

## 7. Response to MVEIRB IR 11 & 31

### IR11

Due to technical and financial capacity constraints, NSMA is unable to adequately respond to this IR. However, NSMA upholds the highest environmental standard available: the water should always remain clean and good to drink; fish must always be plentiful and good to eat. Lac de Gras and Lac du Sauvage must remain a viable part of traditional land use. No assessment endpoints should detract from these fundamental goals.

### IR31

In NSMA's view, no negative social impacts associated with the development are tolerable. However it is important to distinguish the model prediction from the

actual social indicators from research and monitoring. As NSMA outlined in the second section of this Technical Report, there are currently no effective research or monitoring programs administered by the GNWT or the Developer to track all the relevant indicators. Nor do they take responsibility for negative impacts.

Rather than arbitrarily setting a threshold of acceptable number of suicides or addiction, NSMA requests the Review Board to establish a different approach to socio-economic impact mitigation. In this Technical Report, NSMA argued for more effective research and monitoring (including qualitative research), as well as better and clearer accountability for impact mitigation. These will allow for better and more responsive program designs. NSMA is open to other approaches that we are simply not aware of.

## 8. Concluding Remarks

Firstly, NSMA would like to thank all the involved parties for accommodating the NSMA's last minute request for the extension of Technical Report submission deadline. We especially appreciate the Review Board for kindly coordinating the new Work Schedule.

Secondly, NSMA would like to acknowledge and appreciate the flexibility DDEC has shown in accommodating many of the technical and socio-economic requests that the intervening parties have made since the beginning of the EA. Though NSMA has outstanding concerns before the Project can be approved, we are confident that these problems can be resolved in mutually acceptable terms.

Thirdly, NSMA must remind the Governments of Canada and GNWT, as well as the Review Board, that the lack of participant funding imposes severe limitations to NSMA in our ability to provide evidences for the protection of our members' rights. In our view, the lack of adequate capacity, and the federal government's policy to consider the EA process as an aboriginal consultation (PR#63), makes the MVEIRB's EA processes an untenable infliction of financial strain to NSMA. Further, the shortage of capacity and the necessity to participate will continue to result in our requests to extend important deadlines, which will result in substantial economic impacts to the project proponents. For these reasons, NSMA suggests the Review Board to issue the following Measure:

### Measure 13:

Canada and GNWT shall establish a permanent participant funding program for MVEIRB's environmental assessments. The program shall be implemented within two years of the Report of EA.

## 9. Summary of Recommendations

Measure 1	The Developer shall establish an expert panel of traditional knowledge researchers. This panel will work with the Developer and traditional knowledge holders to develop a sound traditional knowledge research protocols that will contribute to a better environmental management at Ekati Mine. Agreed upon research protocols shall be implemented prior to the submission of application for Type A Water Licence for the Jay Project
Measure 2	The Developer shall enter into a traditional knowledge sharing agreement with the Aboriginal Parties within six months of the issuance of the Report of EA. The expert panel described in Measure 1 should assist the Developer and Aboriginal Parties in this process.
Measure 3	The Developer shall provide ongoing support, in kind or financial, to the aboriginal parties in order that they can manage and keep track of traditional knowledge that is relevant to the Project. This traditional knowledge will be shared with the Developer, in accordance with the sharing agreement (Measure 2), and used for environmental management at the Ekati mine.
Measure 4	The GNWT and the Developer shall hold a special Ekati Socioeconomic Agreement Implementation Meeting (“the Meeting”), to discuss and agree on whether they will fully implement the agreement, or amend the agreement. The GNWT and the Developer shall consult the impacted communities prior to the Meeting, in order to reflect their concerns in the implementation strategy or the amendment. The GNWT and the Developer shall invite the impacted aboriginal parties to the Meeting as observers. The Meeting shall be held prior to the issuance of Type A Water Licence for the Project.
Measure 5	In order to mitigate significant and detrimental impacts on NSMA members’ aboriginal rights, Canada shall expediently initiate the process of strength of claim assessment with the NSMA.
Measure 6	The responsible minister (the Minister of ENR, GNWT), shall take into considerations the unique vulnerability that NSMA experiences, when delivering his or her decision on the EA.
Measure 7	The Developer shall conduct a feasibility study on renewable energy technologies, in collaboration with the Arctic Energy Alliance. The Developer shall enter into this study in a view that, technically feasible, and economically achievable alternative should be adopted and operationalized.
Measure 8	Alternatively to the Measure 1, every year, the Developer shall contribute 10% of the cost-saving from its various energy use reduction campaigns towards GHG reduction initiatives in the NWT. This may be implemented

	through establishment of a fund or trust, co-managed by the Developer, the GNWT, aboriginal parties, and a representative from the public (e.g. an environmental NGO).
Measure 9	NSMA believes that it is now a time to consider off-setting of the impacts already incurred – future additional impacts must naturally be off-set. Therefore, the Developer shall develop a Caribou Compensatory Off-set Plan, in collaboration with interested parties, in order to enhance the recovery of the Bathurst caribou herd. The Plan must be made public within one-year of the Report of EA, and it shall be made public. The Plan shall also be a condition of the land use permit.
Measure 10	<p>The Developer shall put further effort into minimizing the ZOI and the mine footprint in order to absolutely ensure the minimal impact to caribou. The Developer shall consider and appropriately implement, at minimum:</p> <ul style="list-style-type: none"> <li>• Rerouting of Jay road, as proposed by Anne Gunn (PR#356)</li> <li>• Caribou over-pass for the esker crossing of the Jay road</li> <li>• Underground power lines and pipes along the Jay road</li> </ul> <p>Caribou aerial surveys to aid the better understanding of ZOI, in collaborations with the industry, government, and aboriginal partners</p>
Measure 11	The Developer shall adhere to the NWT Ambient Air Quality Guideline, and recognizes that the exceedance of the Guideline will constitute significant effects to the environment.
Measure 12	The Project shall commit to the action levels and triggers suggested by the ENR in the email sent from Matthew Seaboyer to the Review Board on July 27, 2015 (PR#492).
Measure 13	Canada and GNWT shall establish a permanent participant funding program for MVEIRB's environmental assessments. The program shall be implemented within two years of the Report of EA.
Suggestion 1	The Developer will place equal weight on scientific knowledge and traditional knowledge when making environmental management decisions.
Suggestion 2	To support Suggestion 1, the Developer will make an investment in traditional knowledge research and implementation that is comparable to investment in science.
Suggestion 3	The GNWT and the Developer, together with the impacted aboriginal parties, will collaboratively work towards developing a research, monitoring, and intervention program(s) that will address those aspects of socioeconomic impacts that are not accounted for in the Ekati SEA. The GNWT and the Developer should recognize that there are robust and useful qualitative research methods that can be employed.

Suggestion 4	The GNWT should not answer requests for monitoring and mitigations by a list of existing programs and planned initiatives, without accompanying data that demonstrate effectiveness of those programs and initiatives.
Suggestion 5	The Developer and GNWT should collaboratively or independently conduct socio-economic impact assessment of the Project specifically for the NSMA members. The Developer or the GNWT may instead provide support for the NSMA to conduct its own socio-economic impact assessment.
Suggestion 6	The Developer should also study the effectiveness of participating in Cap and Trade or other carbon off-setting programs in a view of achieving zero net emission of GHG from the operation of the Ekati mine. The study should be made public.
Suggestion 7	GNWT ENR should develop an enforceable air quality regulation as soon as possible.
Suggestion 8	The Developer and GNWT, in collaboration with DDMI, should design and implement a regional dust fall monitoring program in view of its effect on caribou ZOI.

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