

Review Comment Table

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| Board: | MVEIRB |
| Review Item: | Jay Project - Revised draft Terms of Reference (EA1314-01) |
| File(s): | |
| Proponent: | Dominion Diamond Ekati Corporation |
| Document(s): | Revised Terms of Reference - cover letter (.03 MB) Revised Terms of Reference - track changes version (0.9 MB) Revised Terms of Reference - clean copy (1 MB) Jay-Cardinal Project Description Report Addendum (Jay PDR) (41 MB) |
| Item For Review Distributed On: | June 19 at 11:15 Distribution List June 19 at 11:21 Distribution List |
| Reviewer Comments Due By: | July 3, 2014 |
| Proponent Responses Due By: | July 10, 2014 |
| Item Description: | <p>Please find attached the revised draft Terms of Reference for the Jay Project along with a cover letter submitted by Dominion Diamond. A version of the revised draft Terms of Reference using track changes to show modifications proposed by Dominion is accompanied by a clean copy that includes the changes.</p> <p>The Jay-Cardinal Project Description Addendum (Jay Project Description) is also attached.</p> <p>All documents on the Online Review System will be placed on the MVRB public registry at: http://www.reviewboard.ca/registry/project.php?project_id=674</p> |
| General Reviewer Information: | Reviewers are asked to comment on the revised draft Terms of Reference. Comment and response due dates are as follows: |

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| Contact Information: | <p>Comments from reviewers: July 3</p> <p>Responses from Dominion: July 10</p> <p>The Review Board will issue the final Terms of Reference for the Jay Project after the comment/response period is completed.</p> <p>The draft Work Plan will be updated once the Developer's Assessment Report is submitted.</p> <p>Chuck Hubert 867-766-7052 Mark Cliffe-Phillips 867-766-7055 Sachi De Souza</p> |
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Comment Summary

| Dominion Diamond Ekati Corporation (Proponent) | | | | |
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| ID | Topic | Reviewer Comment/Recommendation | Proponent Response | Board Response |
| 1 | General File | Comment (doc) Cover Letter for revised Terms of Reference Responses from DDEC. Recommendation | | |
| Deninu K'ue First Nation: Louis Balsillie | | | | |
| ID | Topic | Reviewer Comment/Recommendation | Proponent Response | Board Response |
| 1 | General File | Comment (doc) Letter from Deninu Kue First Nation Recommendation GENERALFILE | See Cover Letter for revised Terms of Reference Responses from DDEC (above) | Section 2.2 – No change: requirement to incorporate TK is addressed Section 2.3 – No change: Fort Resolution is included in geographic scope. Engagement Plan submitted by Dominion June 18 Section 3.2.1 – Changed: caribou and caribou habitat added to list of Valued Components Section 5.1 – No change: SARA adequately addressed |
| GNWT - Lands: Paul Mercredi | | | | |

| ID | Topic | Reviewer Comment/Recommendation | Proponent Response | Board Response |
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| 1 | Preamble | <p>Comment The proposed new paragraph on page 4 includes statements about developer motivations and project benefits which are not generally included in terms of reference documents.</p> <p>Recommendation GNWT recommends that this section of the final terms of reference focus on the changes to the proposed development and avoid commentary on other matters.</p> | <p>July 10: Dominion provided wording for the Review Board's consideration that we believe is appropriate for this stage of the Jay Project Terms of Reference. Dominion is fully aware the Review Board will issue Terms Of Reference as appropriate.</p> | <p>Section 1.2 – paragraph inserted by DDEC removed and replaced in modified form in new section 1.4. New section describes the process steps for the revised Jay Project Terms of Reference.</p> |
| 2 | Appendix B | <p>Comment Although DDEC has not proposed any revisions to Appendix B, GNWT notes that Appendix B lists several guidelines issued by Aboriginal Affairs and Northern Development Canada: • Guidelines for Designing and Implementing Aquatic Effects Monitoring Programs for Development Projects in the Northwest Territories (2009); • Mine Site Reclamation Guidelines (2007); • Mine Site Reclamation Policy for the Northwest Territories (2002) • Northwest Territories Cumulative Impact Monitoring Program; and, • Guidelines for Spill Contingency Planning (2007)</p> <p>Recommendation GNWT encourages the developer to review these 3 guidelines and 1 policy when writing the Developer's Assessment Report. The Northwest Territories Cumulative Impact Monitoring Program is a program, not a guideline, and has been devolved to the Government of the Northwest Territories. GNWT encourages the developer to review CIMP activities and data while assessing potential impacts from the development, as well as in creating and presenting monitoring and mitigation programs for the project.</p> | <p>July 10: Dominion's understanding is that the documents listed in Appendix B are intended by the Review Board to be used as references in the development or adaptation of environmental monitoring and management plans for the Jay Project. Dominion is actively engaged with the GNWT CIMP Program as a member of the collaborative working group for development of a water quality model for Lac de Gras.</p> | <p>No change to Terms of Reference.</p> |

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| 3 | General | Comment GNWT looks forward to reviewing the Developer’s Assessment Report and participating in the subsequent phases of the environmental assessment. Recommendation N/A | July 10: No response necessary. | No change to Terms of Reference |
| Gov of Canada: David Alexander | | | | |
| ID | Topic | Reviewer Comment/Recommendation | Proponent Response | Board Response |
| 1 | Transport Canada - general comment | Comment Legislative amendments to the Navigable Waters Protection Act, now the Navigation Protection Act (NPA), came into force on April 1, 2014, which may affect Transport Canada’s responsibilities related this project. More information on the NPA is available at http://www.tc.gc.ca/eng/programs-621.html . A primary purpose of the NPA is to regulate works and obstructions that risk interfering with navigation in the navigable waters listed on the schedule to the Act. A complete list of the waters in the schedule is available at http://parl.gc.ca/HousePublications/Publication.aspx?DocId=5765988&Language=E&Mode=1&File=615#3 . Any project components are proposed to be built in, on, over, under, through or across any of the NPA’s scheduled waterways should be self-assessed against the Order Amending the Minor Works and Waters (NPA) Order, to determine if an application under the NPA may be required for those components. In addition, section 23 of the NPA states that “No person shall dewater any navigable water” without a Governor-in-Council exemption (section 24). Therefore, the proponent is advised to contact Transport Canada by phone at (780) 495-8215, by fax at (780) 495-8607, or by e-mail at NPPPNR-PPNRPN@tc.gc.ca to clarify its | July 10: Dominion plans to determine its regulatory requirements per the Navigation Protection Act for the Jay Project concurrent with the Environmental Impact Assessment. | No change to Terms of Reference. |

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| | | current regulatory requirements. Relevant information from the revised Project Description has already been forwarded to the NPP for their information. Recommendation Transport Canada recommends that the proponent confirm it is in the process of determining its revised regulatory requirements per the Navigation Protection Act. | | |
| 2 | Fisheries and Oceans Canada - has no further comments at this time. Please see attached letter. | Comment (doc) . Recommendation . | July 10: (doc) No response necessary. | |
| 3 | Environment Canada - has no further comments at this time. | Comment . Recommendation . | July 10: No response necessary. | |
| Independent Environmental Monitoring Agency: Kevin O'Reilly | | | | |
| ID | Topic | Reviewer Comment/Recommendation | Proponent Response | Board Response |
| 1 3 | General File | Comment (doc) Covering Letter Recommendation | | |

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| 1 | Amended Project Description, s. 4.4.1.3 Open Pit-Mining Within Single Dike "Jay Only, Other Dike Alignments", pg. 18 | <p>Comment DDEC references a 2014 report by Golder Associates Ltd. with regard to other dike alignments and construction options. This report was not submitted by DDEC.</p> <p>Recommendation DDEC should file the 2014 Golder report with the Review Board.</p> | <p>July 10: The Project Description Amendment states that Dominion commissioned Golder Associates to develop and assess other dike alignments, namely the "horseshoe alignment" and the "hockey-stick alignment". Both alignments are described in the PD Amendment for the purpose of the alternatives assessment (Sections 4.4.1.3, 4.4.2.1, 4.4.2.2 and 4.4.2.3). The selected alignment ("horseshoe") is then described further for the purpose of the Project Description (Section 4.6). A technical report beyond those descriptions provided in the PD Amendment was not necessary for the PD Amendment.</p> | <p>The dike alignments are described in the Project Description (PD). The actual Report is not required for preparation of the Terms of Reference. No change to Terms of Reference.</p> |
| 2 | Amended Project Description, s. 4.6.2.4 Dewatering for Jay Pipe Development, second | <p>Comment This bullet reads as follows: "Between water elevation 411 masl and 321 masl". It is not clear whether the second figure is in error as it would mean dewatering of the Lac du Sauvage area below the bottom of the lake bed and the next section deals with open pit mining.</p> <p>Recommendation DDEC should verify the second figure for the dewatering of the Jay pipe area.</p> | <p>July 10: The text in question does contain a typo and should read "Between water elevation 411 and 379 masl TSS management is expected to be required prior to discharge to the environment."</p> | <p>Project Description section 4.6.2.4. - Typo correction noted. No change to Terms of Reference.</p> |

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| | bullet, pg. 65 | | | |
| 3 | Land Use Permit and Water Licence Applications | <p>Comment While DDEC has amended the Project Description, the land use permit and water licence applications have not been amended. It is not clear whether these applications should be amended now or after the Environmental Assessment.</p> <p>Recommendation DDEC should indicate when it anticipates amending its land use permit and water licence applications.</p> | <p>July 10: Dominion sees no reason, requirement or benefit to amend these documents. Dominion anticipates that it will file revised and/or updated regulatory applications in future that reflect the reviews conducted through the Environmental Assessment.</p> | Water Licence and Land Use Permit will be amended during the regulatory phase after this environmental assessment is completed. |
| 4 | Proposed Amendments to the Terms of Reference, s. 1.2 Referral to environmental assessment, pg. 4 | <p>Comment The proposed changes at the end of this section appear as a set of conclusions reached by the Review Board. If the statements are the views or position of DDEC, they should be stated as such.</p> <p>Recommendation The Review Board should change this proposed wording to clearly indicate that the changes in the project were initiated by DDEC and to state what, in the view of DDEC may have motivated the changes rather than draw a series of conclusions from what DDEC alone has stated.</p> | <p>July 10: See response to comment GNWT-1.</p> | Section 1.2 – paragraph inserted by DDEC removed and replaced in modified form in new section 1.4. New section describes the process steps for the revised Jay Project Terms of Reference. |
| 5 | Proposed Amendments to the Terms of Reference, s. 5.1 Biophysical environment, item 6 (d), pg. 17; | <p>Comment The references to "Misery Pit" in these sections of the proposed changes do not include the use of the Lynx Pit for water management as identified in the amended Project Description (s. 4.3.3.3 and other sections). It is important to consider how Lynx Pit will be considered in the context of water management, and impacts to water quality and quantity.</p> <p>Recommendation We believe the references to "Misery Pit" as noted should be amended to read "Lynx and Misery Pits".</p> | <p>July 10: Dominion does not object to the inclusion of the Lynx Pit in the locations identified by IEMA if the Review Board finds this appropriate. Dominion's understanding would be that, similar to the use of other existing facilities and existing developments, assessment of the Lynx Pit would focus on the additional, new or changed uses of the Lynx pit as compared to the existing authorized uses. Note that IEMA's reference to S.7.3.1.2 bullet 1 appears intended to refer to bullet 6.</p> | Sections 5.1, 6(d), 7.3.1.1, item 2 bullet 1 7.3.1.2 bullet 6 Use of Lynx pit for water management should be described. Sections modified to include "Lynx and Misery Pits" in Terms of Reference. |

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| <p>s. 7.3.1.1 Impacts top water quality from project component s, item 2 first bullet and item 7 second bullet; s. 7.3.1.2 Impacts to water quantity from project component s, first bullet</p> | | | |
| <p>6 Proposed Amendme nts to the Terms of Reference, s. 5.1 Biophysica l environme nt, item 7(a), pg. 18</p> | <p>Comment Although it may be assumed that the Christine Lake outflow diversion into Lac du Sauvage may be included, the wording should be changed to make sure. Recommendation Add in the following after “Lac de Gras”, “and Lac du Sauvage (including the Christine Lake outflow)”.</p> | <p>July 10: Dominion finds the suggested wording to be unnecessary as the suggested inclusion would already be captured, however Dominion does not object to the additional wording as suggested if the Review Board finds this to be appropriate.</p> | <p>Section 5.1, 7(a) Insertion of “and Lac du Sauvage (including the Christine Lake outflow)” made to Terms of Reference as recommended.</p> |

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| 7 | Proposed Amendments to the Terms of Reference, s. 5.1 Biophysical environment, item 13(b), pg. 19 | <p>Comment Although it may be assumed that the Christine Lake outflow diversion into Lac du Sauvage may be included, the wording should be changed to make sure.</p> <p>Recommendation Add in the following after “Lac du Sauvage”, “and the Christine Lake outflow diversion”.</p> | <p>July 10: Dominion finds the suggested wording to be unnecessary as the suggested inclusion would already be captured, however Dominion does not object to the additional wording as suggested if the Review Board finds this to be appropriate.</p> | <p>Section 5.1 13(b) Addition of “and the Christine Lake outflow diversion” made to Terms of Reference.</p> |
| 8 | Proposed Amendments to the Terms of Reference, s. 6.3 Development phases and schedule, new third bullet, pg. 24 | <p>Comment It is not clear whether the use of Lynx and Misery Pits for water management will be included in the Project scheduling.</p> <p>Recommendation Add a new third bullet that would read “schedule for the use of Lynx and Misery Pits for water management and the reclamation of these pits.” •</p> | <p>July 10: Dominion finds the suggested wording to be unnecessary as the suggested inclusion would already be captured, however Dominion does not object to the additional wording as suggested if the Review Board finds this to be appropriate.</p> | <p>Section 6.3 bullet 3 “schedule for the use of Lynx and Misery Pits for water management and the reclamation of these pits.” Added to the Terms of Reference</p> |
| 9 | Proposed Amendments to the Terms of Reference, s. 7.3.1.1 Impacts to | <p>Comment This provision of the Terms of Reference does not include any requirement for DDEC to spell out the lead time for any contingency for water treatment. This is a critically important factor for the planning and implementation of any contingency.</p> <p>Recommendation After the word “alternatives”, insert “and the necessary time for construction and</p> | <p>July 10: Dominion finds the suggested wording to be unnecessary as the suggested inclusion would already be captured, however Dominion does not object to the additional wording as suggested if the Review Board finds this to be appropriate.</p> | <p>Section 7.3.1.1 item 7 The Board agrees that planning for water treatment as a contingency is important. “and the necessary time for construction and implementation” added to Terms of Reference.</p> |

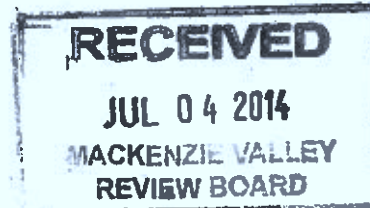
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| | water quality from project components, item 7, pg. 28 | implementation”. | | |
| 10 | Proposed Amendments to the Terms of Reference, s. 7.3.2 Impacts fish and fish habitat from project components, pg. 30 | <p>Comment It is not clear whether the impacts to the fish and fish habitat in the Christine Lake outflow will be described.</p> <p>Recommendation After the words “Lac du Sauvage” in the first paragraph, insert “and the proposed diversion of the Christine Lake outflow”. In the last bullet, after the words “Lac du Sauvage”, insert the words “and the Christine Lake outflow”.</p> | <p>July 10: Dominion does not object to the additional wording as suggested for the first paragraph of S.7.3.2 if the Review Board finds this to be appropriate. Dominion disagrees with the suggestion of additional wording in the last bullet of S.7.3.2. This bullet was initially and remains specific to the dewatered area of Lac du Sauvage, which may not necessarily have the same long term (closure) criteria as the outflow from Christine Lake. As such, the bullet should remain specific to Lac du Sauvage in this case. Dominion feels that IEMA's concern would be adequately addressed by the first suggested inclusion (above in this response), which would explicitly incorporate the outflow of Christine Lake into the requirement for assessment.</p> | <p>Section 7.3.2 “and the proposed diversion of the Christine Lake outflow” added to Terms of Reference</p> <p>Section 7.3.2 last bullet The Board agrees with DDEC that the intent of this bullet is specific to Lac du Sauvage. No change to Terms of Reference.</p> |
| 11 | Proposed Amendments to the Terms of Reference, s. 7.3.2 Impacts fish and | <p>Comment The proposed diking in Lac du Sauvage may have some potential to serve as fish habitat. The potential for contaminant leaching from the diking materials (including interstitial pore spaces) should also be discussed in relation to impacts to eggs or alevins.</p> <p>Recommendation In the first list of bullets, add a new one that reads “report on the potential for fish to use of the Lac du Sauvage dyking as fish spawning habitat and</p> | <p>July 10: Dominion finds the suggested wording to be unnecessary as the suggested inclusion would already be captured, however Dominion does not object to the additional wording as suggested if the Review Board finds this to be appropriate.</p> | <p>Section 7.3.2 Added bullet “report on the potential for fish use of the Lac du Sauvage diking as fish spawning habitat and the potential for impacts to eggs or fry from any contaminants coming off or within the interstitial spaces of the dike”.</p> |

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| | fish habitat from project components, pg. 30 | the potential for impacts to eggs or alevins from any contaminants coming off or within the interstitial spaces of the dyke” • | | |
| 1 2 | Proposed Amendments to the Terms of Reference, s. 12 Closure and reclamation, first bullet, pg. 43 | <p>Comment It is not clear whether DDEC will describe whether the ICRP and any related closure planning for the Lynx and Misery Pits will be discussed in the Developer's Assessment Report.</p> <p>Recommendation After the words “Jay Project”, insert “including the use of the Lynx and Misery Pits”.</p> | <p>July 10: Dominion finds the suggested wording to be unnecessary as the suggested inclusion would already be captured, however Dominion does not object to the additional wording as suggested if the Review Board finds this to be appropriate.</p> | <p>Section 12 bullet 1 Added “including the use of the Lynx and Misery pits”</p> |



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Chuck Hubert
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Mackenzie Valley Review Board
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July 3, 2014

Re: Dominion Diamond Ekati Corporation Jay Project (EA1314-01) – Comments on the Revised Terms of Reference

Dear Mr. Hubert,

The Deninu Kue First Nation (DKFN) is pleased to provide the following comments on the Revised Terms of Reference for the Dominion Diamond Ekati Corporation Jay Project (EA1314-01). The Jay Project is within the current and traditional socio-economic use areas as identified in the Deninu K'ue Ethno-history Report prepared by Vanden Berg and Associates. This report was prepared during the environmental assessment review of the Gahcho Kue Project and is currently undergoing a revision based on more recent interviews with community members.

Our specific comments are:

Section 2.2 Incorporation of traditional knowledge

In this section, the Terms of Reference states: "DDEC will make all reasonable efforts to provide assistance in the collection and consideration of traditional knowledge relevant to the Jay Project." As mentioned above, we are currently updating the Deninu K'ue Ethno-history Report. Based on the direction in this section of the revised Terms of Reference, it is our expectation that DDEC will support the DKFN in this undertaking since it will be a valuable contribution to the environmental assessment.

Section 2.3 Public engagement (page 7)

This section, as well as the Ekati Mine Engagement Plan Version 2.1 for the Jay Project, submitted to the Review Board on June 18, 2014 by DDEC, identifies potentially affected communities as only those that have negotiated impact benefit agreements. DDEC only acknowledges the Yellowknives Dene First Nation and the Lutsel K'e Dene First Nation as the Akaitcho Treaty 8 First Nation. The DKFN has been identified as a potentially affected community, therefore the reference to "Ekati Mine IBA groups" should be removed from this section. We also recommend that DDEC update its Engagement Plan to include all potentially affected communities.

Section 3.2.1 Valued ecosystem components (page 10)

It is evident that barren-ground caribou and caribou habitat has been removed from the original list of valued components to be used in the assessment of impacts. We request that barren-ground caribou and caribou habitat be added back to this list.


Section 5.1 Biophysical environment, specifically item 10 Wildlife at risk occurring in the environmental assessment study area (page 18)

We recommend that the following be added in regard to the identification of species at risk:

- Identify any species currently listed, or is under consideration for listing, under the territorial species at risk legislation that is present or potentially present in the environmental assessment study area.

In closing we would like to acknowledge DDEC's response to our initial comments on the draft Terms of Reference. We note that there has been some wording changes in the latest version that reflect some of our original comments. We look forward to being fully engaged in the environmental assessment of this project and working with the proponent in this regard, particularly as it related to DKFN traditional knowledge. Should you require any clarification on our comments, please contact me at your convenience.

Sincerely,


Chief Louis Balsillie

cc. Linda Vanden Berg, LVB Strategic Negotiations and Research
Marc d'Entremont, LGL Limited



Fisheries and Oceans Pêches et Océans
Canada Canada

Fisheries Protection Program
Central and Arctic Region
Suite 301, 5204-50th Ave
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June 26, 2014

Your file *Votre référence*
EA1314-01

Our file *Notre référence*
13-HCAA-CA6-00096

Mark Cliffe-Phillips
Mackenzie Valley Environmental Impact Review Board
200 Scotia Centre
Box 938, 5102-50th Ave
Yellowknife, NT X1A 2N7

Dear Mr. Cliffe-Phillips:

Subject: Jay Project- Revised draft Terms of Reference

Fisheries and Oceans Canada-Fisheries Protection Program has reviewed the Jay Project – Revised draft Terms of Reference distributed to reviewers on June 19, 2014 and does not have any comments at this time in addition to the original review and comments of the Jay-Cardinal proposal. The review was made pursuant to Fisheries and Oceans Canada's mandate.

Should you have any questions or concerns, please contact Véronique D'Amours-Gauthier at 867-669-4912 or veronique.damours-gauthier@dfo-mpo.gc.ca.

Yours sincerely,

Stu Niven
Senior Fisheries Protection Biologist



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July 2, 2014

Chuck Hubert
Senior Environmental Assessment Officer
Mackenzie Valley Environmental Impact Review Board
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Box 938, 5102-50th Ave
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Dear Mr. Hubert

Re: Comments on Amendments to the Jay Project (EA1314-01)

The Agency has had an opportunity to review the Dominion Diamond Ekati Corp. (DDEC) amended project description for the Jay Project and the proposed changes to the Terms of Reference for the ongoing Environmental Assessment.

We thank DDEC for providing the additional information. The company's proposals for changes to the Terms of Reference appear to have been done well. In our attached Comment Table (submitted via the on-line public registry system) we recommend a number of further changes to better reflect the amended project description and to ensure that there is a thorough assessment of the environmental impacts of the Jay Project. Our major concerns (alternatives, and focus on water quality, caribou and aquatic life) have been meaningfully retained.

We would be pleased to discuss these comments with you, DDEC and others to ensure a successful Environmental Assessment of the Jay Project.

Sincerely,

Bill Ross
Chairperson

cc. Society Members (DDEC, GNWT, AANDC and Aboriginal Society Members)
Stu Niven, Department of Fisheries and Oceans
Sarah Lacey-McMillan, Environment Canada



July 10, 2014

Chuck Hubert
Senior Environmental Assessment Officer
Mackenzie Valley Review Board
200 Scotia Centre
Box 938, 5102-50th Avenue
Yellowknife, NT X1A 2N7

Dear Mr. Hubert:

This letter is to provide the Mackenzie Valley Review Board (MVRB) with Dominion Diamond Ekati Corporation's (DDEC) responses to comments from reviewers on the Revised *Terms of Reference* for the DDEC's proposed Jay Project (EA1314-01). Our responses are contained in the attached comment table.

In addition, there were several comments included in a letter from the Deninu K'ue First Nation (DKFN). Please find those responses below.

Section 2.2 Incorporation of Traditional Knowledge

DDEC is committed to incorporating Traditional Knowledge into the Jay Project where appropriate. This includes the development of a Traditional Land Use and Traditional Knowledge Baseline Report that includes the publicly available literature on DKFN Traditional Land Use. This report will be shared with DKFN for review and comment in the next several weeks.

In addition, DDEC has recently written to DKFN requesting a meeting to discuss the project and its potential impacts including any further information they can provide on traditional land use.

Section 2.3 Public Engagement

DDEC believes the current wording in the Terms of Reference is appropriate. As noted above, DDEC has recently written to DKFN requesting a meeting to discuss the project and its potential impacts on DKFN.

Section 3.2.1 Valued Ecosystem Components

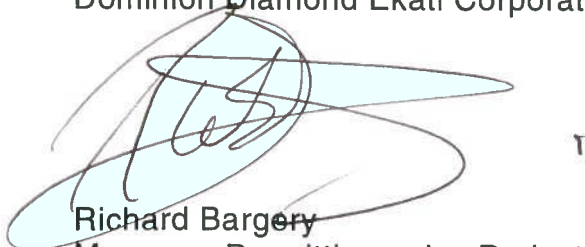
DDEC finds the suggested wording to be unnecessary as impacts on caribou and caribou habitat will be assessed throughout. However, DDEC does not object to the additional wording as suggested if the Review Board finds this to be appropriate.

Section 5.1 Biophysical environment, specifically item 10 Wildlife at Risk occurring in the environmental assessment study area

DDEC disagrees. DDEC believes this recommendation is adequately addressed in the draft TOR as currently worded.

Thank you for the opportunity to provide our responses. We look forward to receiving a final Terms of Reference for this project.

Sincerely
Dominion Diamond Ekati Corporation,



Richard Bargery
Manager, Permitting – Jay Project