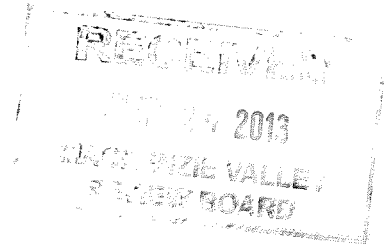


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September 23, 2013

File: C-130

Mr. Matthew Spence
Director General
Northern Major Projects Office
Canadian Northern Economic Development Agency
PO Box 1500
Yellowknife, NT X1A 2R3

Dear Mr. Spence:

RE: De Beers Canada Inc.'s Response to Comments on the Report of Environmental Impact Review of the Gahcho Kué Diamond Mine Project (the "Project") (EIR0607-001)

De Beers Canada Inc. ("De Beers") is writing in regard to correspondence posted on the Mackenzie Valley Environmental Impact Review Board ("MVEIRB") public registry, dated August 20, 2013, from each of the Deninu Kué First Nation, Lutsel K'e Dene First Nation, Yellowknives Dene First Nation and Tlicho Government (collectively, the "four First Nations"), from the North Slave Métis Alliance ("NSMA") dated August 22, 2013 and from the Northwest Territory Métis Nation ("NWTMN"; NSMA and NWTMN are collectively referred to as the "Métis groups") dated August 28, 2013. Their correspondence is in response to a letter from the Canadian Northern Economic Development Agency/Northern Projects Management Office ("NPMO") dated July 30, 2013, sent to a number of Aboriginal parties, requesting comment on the Report of Environmental Impact Review of the Gahcho Kué Diamond Mine Project (the "Report"). The NPMO requested that each recipient confirm that potential adverse impacts resulting from the Project on each First Nation's and Métis group's asserted and established Aboriginal and Treaty rights have been identified and addressed in the Report.

De Beers, in response to the letters, in general disagrees with the Aboriginal Groups' conclusion that the mitigation measures recommended by the Mackenzie Environmental Impact Review Board Gahcho Kué Panel (the "Panel") are incomplete and that the Minister of Aboriginal Affairs and Northern Development Canada ("AANDC") should refer the matter back to the Panel for further consideration.

First, this completely disregards the fact that through the thorough multi-year environmental impact review process, a number of comprehensive commitments were made. Many of these were made as a result of consultation with the four First Nations and Métis groups,

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and the commitments made apply to every aspect of the Project, including engineering, environmental and socio-economic. There are nineteen pages of commitments, found in Table C of the Report.

These commitments form part of the overall Project and as such must be implemented by De Beers in order for the Project to proceed. This is explicitly recognized by the Panel in its Report: "These commitments made by the developer were instrumental in the Panel's section 134 (2) findings and are binding."¹ In addition, several of these commitments, which will likely become terms and conditions on any future water licenses and land permits issued by the Mackenzie Valley Land and Water Board ("MVLWB"), and authorizations issued by other regulators, are legally binding and will be enforced by the regulators.

Second, as noted numerous times in the Report, many areas, including several monitoring programs and management plans, will be reviewed in more detail during the MVLWB permitting phase. This approach accords with the MVLWB's broad powers under the *Mackenzie Valley Resource Management Act* to consider these issues; namely, because it has jurisdiction "in respect of all uses of land or waters or deposits of waste in the Mackenzie Valley for which a permit is required...or a licence is required..."² Accordingly, it is appropriate that the majority of the concerns noted in the four First Nations' correspondence will be considered during the water license and land use permit applications process and not at this point in the regulatory review.

1. Ni Hadi Yati

The four First Nations' correspondence indicates that, in their respective closing submissions, as part of the environmental impact review process, AANDC, Fisheries and Oceans Canada ("DFO") and Natural Resources Canada ("NRCan") all requested that the requirement for the parties to enter into an agreement for Ni Hadi Yati be made a measure. This is incorrect. NRCan indicated that "it is interested in learning more about the Ni Hadi Yati proposal as it is further developed"³, AANDC submitted that the development of Ni Hadi Yati be "captured as a commitment"⁴ and DFO indicated that it "looks forward to hearing more details around this initiative."⁵

As noted by the Panel in its Report, the "Panel has not issued a measure for Ni Hadi Yati because Aboriginal parties and the developer have made a commitment to negotiate a

¹ At page 36.

² Section 102, S.C. 1998, c. 25

³ At page 3.

⁴ At page 5.

⁵ At page 3.

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contract for its implementation and government agencies have committed to contributing technical expertise on an as-needed and as-available basis.”⁶ De Beers remains committed to and continues to actively support the development of Ni Hadi Yati.

Toward that end, De Beers has been working diligently and collectively with the four First Nations as well as with the Métis groups over the past several months to advance this initiative. We are pleased to report that excellent progress has been made.

Specifically, in January 2013 De Beers invited the four First Nations and two Métis groups to participate in a meeting to map a path forward for the establishment of Ni Hadi Yati. De Beers also engaged the two Métis groups in the first quarter of 2013 to confirm their participation in the Ni Hadi Yati Agreement. The four First Nations and two Métis groups then selected their negotiators for Ni Hadi Yati and provided confirmation of their negotiating team (the “Negotiators”) to De Beers on April 23, 2013.

Discussions between De Beers and the Negotiators to establish a process agreement commenced on April 25, 2013. This process agreement includes funding from De Beers for the four First Nations and two Métis groups to support the negotiation of Ni Hadi Yati. It also includes the terms of the negotiation, including the timeframe for the negotiation and the scope of what will be included in Ni Hadi Yati. The process agreement was signed by De Beers on July 12, 2013 and each of the Four First Nations and two Métis groups signed the process agreement shortly thereafter. To date, De Beers and the Negotiators have held four negotiation sessions and the negotiations remain on track as per the process agreement. Successful negotiations will mean the Ni Nadi Yati Agreement can then be considered for ratification by all parties to the agreement. Once the Ni Hadi Yati Agreement is ratified, the parties will begin implementing it according to its terms, including those that relate to funding, all of which will be provided by De Beers. This is consistent with De Beers’ commitments as captured in the Report.

In the event that the four First Nations and two Métis groups do not ratify the Agreement negotiated by the Negotiators, De Beers is nonetheless responsible for ensuring adaptive management for the Project, including incorporating input and traditional knowledge from the four First Nations and the Métis groups. De Beers made the commitment to proceed with an Adaptive Management Advisory Committee as was explicitly recognized by the Panel: “Ni Hadi Yati is a replacement for the adaptive management advisory committee (AMAC)..... Regardless of the mechanism developed to provide input from Aboriginal parties to adaptive management, De Beers remains responsible for adaptive management - namely monitoring, mitigation and making changes to the project as necessary to ensure predictions of the EIS are accurate and that significant adverse impacts do not occur.”⁷ Accordingly, contrary to the assertion in the four First Nations’ correspondence, there is an alternative in the event

⁶ At page 159.

⁷ At pages 159-160.

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that the parties cannot ratify the Ni Hadi Yati Agreement. While De Beers would prefer to advance Ni Hadi Yati to a formalized agreement and fund the Ni Hadi Yati initiative, De Beers will fund the alternative in the event Ni Hadi Yati is not established.

As a follow up to the developer's commitments as captured in the Report, De Beers is following through on our commitment for a life of mine engagement plan and will be submitting this plan to the MVLWB as part of the supporting documents required for the Water License application, which will include an update on our engagement with all Aboriginal parties regarding Ni Hadi Yati among other things.

2. Dykes and Permafrost Issues

The four First Nations' correspondence indicates that issues regarding "fundamental engineering questions" become the subject of measures, and refers to the recent MVEIRB Fortune Minerals report (EA0809-004) as an example. However, a review of the measures in the Fortune Minerals report does not support this statement as there are no measures that pertain to dykes or permafrost issues.

As noted in the Report, De Beers committed to further developing and filing the Sediment and Erosion Management Plan with the MVLWB as a component of the water licence application.⁸ The plan will include details of the sediment and erosion control measures for each dyke to be constructed, along with contingency plans. It is anticipated that NRCAN will participate in the permitting process, and that the concerns raised in the four First Nations' correspondence will be considered by the MVLWB.

3. Water Quality and Kennady Lake

The issue of water quality and impacts to Kennady Lake was addressed through a variety of commitments made by De Beers and summarized in Table C of the Report.

Similar to above, the Report again acknowledged that the permitting process is the appropriate place to deal with specific water quality objectives: "The Panel is of the view that the differences of opinions between the parties and the developer regarding specific water quality objectives can be dealt with in the water licensing process."⁹ As such, De Beers is continuing to develop a Water Management Plan which will be included in its water licence application. All parties (including the four First Nations, the Métis groups and government departments) will have an opportunity to review and comment on the Water Management Plan during the MVLWB process.

⁸ At page C-x.

⁹ At page 52.

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In addition, objectives for Areas 2 to 7, which include the Water Management Pond, will be developed as part of the Closure and Reclamation Plan process. It is understood that the development of a Closure and Reclamation Plan for the Project is an iterative process that requires engagement with Aboriginal groups, interested parties and regulators and that a Closure and Reclamation Plan will be prepared in accordance with the *Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories* (MVLWB, 2011).

The four First Nations' correspondence states that "the absence of a mandatory follow-up monitoring program is insufficient to address the significance of potential impacts." This is not correct, as the Panel explicitly concluded "that a follow-up program for water quality is required. The Panel notes that the developer has committed to prepare an AEMP [Aquatic Effects Management Program] as part of water licensing. In the opinion of the Panel, the AEMP, which will become a condition of the water license, will satisfy the need for a follow-up program addressing water related matters."¹⁰ The Panel also provided a list of requirements that must be addressed in the AEMP.¹¹

4. Caribou and Monitoring, Follow-Up and Adaptive Management

It is understood that caribou are of vital importance to the four First Nations and the Métis groups and that mitigation measures are important in minimizing adverse impacts to caribou. A key aspect of De Beers' mitigation, monitoring and follow-up is the Wildlife Effects Monitoring Program ("WEMP") and Wildlife and Wildlife Habitat Protection Plan ("WWHPP"). De Beers has been further developing the WEMP and WWHPP with input from interested parties. The opportunity to provide input has been extended to all Aboriginal parties and regulators. De Beers submitted draft revised plans to the MVLWB in May 2013 for review and comment.

The four First Nations' correspondence states that "a critical omission from the developer's plans for monitoring, follow-up and adaptive management are any proposals any monitoring of the access road as a partial barrier to caribou movement." However, the Panel indicated that De Beers' follow-up program shall include "monitoring the presence of caribou along the Winter Access Road and the effects of the road on caribou movement and behaviour."¹² The WEMP, which currently includes this commitment, is being updated to reflect the Panel's specific request. Accordingly, this criticism is not substantiated.

¹⁰ At page 65.

¹¹ At page 66.

¹² At page 106 (emphasis added).

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In addition, both AANDC and the Government of the Northwest Territories Environment and Natural Resources department have engaged Aboriginal parties in workshops and the review of documents over the past several months to further cumulative effects planning.

Further, De Beers is undertaking discussions with the Government of the Northwest Territories on a Memorandum of Understanding regarding wildlife plans including caribou protection which will encompass the above commitments and which will acknowledge the Government of the Northwest Territories' and De Beers responsibilities in this regard.

5. Impacts to Other Components of the Biophysical Environment

As noted in the Report, there is no "regulatory gap" because the Government of the Northwest Territories can regulate air emissions. A request that the issue of air quality be sent back to the Panel for further consideration does not change this fact nor will it provide any further clarity on this issue.

In addition, the four First Nations' correspondence overlooks the fact that De Beers has made several commitments regarding air quality, including the development of an Air Quality and Emissions Monitoring and Management Plan and an Incinerator Management Plan. De Beers has also committed to the incinerator being "engineered and operated to meet CCME [Canadian Council for Ministers of the Environment] emission standards for dioxins and furans."¹³ Drafts of both plans were submitted to the MVLWB in May 2013 for review and comment by interested parties.

Further, De Beers is undertaking discussions with the Government of the Northwest Territories on a Memorandum of Understanding related to air quality management which will encompass the above commitments and which will acknowledge the Government of the Northwest Territories' and De Beers' responsibilities in this regard.

6. Cultural Environment

Although the four First Nations' correspondence is critical of the Panel's conclusions regarding the potential impacts to the cultural environment and incorporation of traditional knowledge and its acknowledgement that De Beers has committed to address cultural values and incorporate traditional knowledge into all phases of the Project, there are no suggested additional measures or mitigations included in the four First Nations' correspondence. Accordingly, there is nothing to be gained by referring this matter back to the MVEIRB.

¹³ At page 117.

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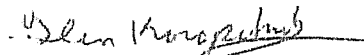
7. Social and Economic Values

The statement in the four First Nations' correspondence that "the Panel assumes that other processes (the GNWT SEMA and IBAs with Aboriginal parties) will be concluded and provide the necessary basis for mitigating impacts and providing economic and social benefits" is incorrect. The Report does not support this assumption. The Report states that such agreements "may include policies and programs that minimize adverse social impacts and provide benefits to aboriginal groups."¹⁴ However, it does not indicate anywhere that IBAs will provide the necessary basis for mitigating impacts and providing benefits.

In addition, the Report acknowledges that the Panel is "aware that impact benefit agreements are being negotiated between De Beers and aboriginal organizations...although no specific commitment to complete such an agreement is on the public record."¹⁵ In fact, the Panel's conclusion is that "adverse social impacts from the Project are not likely to be significant provided the developer implements its commitments including the negotiation and implementation of a final Socio-Economic Agreement with the GNWT." De Beers and the Government of the Northwest Territories signed a Socio Economic Agreement for the Project on June 28, 2013 and a copy of that agreement is attached for ready reference.

In closing, De Beers thanks the NPMO for this opportunity to respond to the comments provided in response to the Panel Report. If you have any questions regarding the foregoing, please do not hesitate to contact the undersigned.

Yours Truly,



Glen Koropchuk
Chief Operating Officer

cc: Vern Christensen, Executive Director (MVEIRB)

Attachment

¹⁴ At page 142 (emphasis added).

¹⁵ At page 140.