



MAY 19 2016

President William Enge
North Slave Métis Alliance
P.O. Box 2301
YELLOWKNIFE NT X1A 2P7

VIA EMAIL & FAX

Dear President Enge:

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

As you are aware, on May 19, 2016, the Government of the Northwest Territories (GNWT) Minister of Lands, as the Minister with delegated authority under the *Mackenzie Valley Resource Management Act* and on behalf of the other responsible ministers (RMs) adopted the Mackenzie Valley Environmental Impact Review Board's (MVEIRB or Review Board) recommendation that Dominion Diamond Ekati Corporation's (Dominion or the developer) proposed Jay Project (the Project) be approved subject to the implementation of the mitigation measures and developer's commitments in the Review Board's *Report of Environmental Assessment and Reasons for Decision* (the Report). The territorial responsible ministers with jurisdiction in relation to the Project are the Minister of Lands, the Minister of Environment and Natural Resources, and the Minister of Health and Social Services. The federal responsible ministers with jurisdiction in relation to the Project are the Minister of Transport and the Minister of Fisheries, Oceans and the Canadian Coast Guard as consolidated by the Minister of Indigenous and Northern Affairs.

The GNWT thanks the North Slave Métis Alliance (NSMA) for its letter dated April 4, 2016 and its active participation throughout the environmental assessment (EA) of the Project. This letter responds to the NSMA's letter, to outline some of the considerations taken by GNWT RMs in reaching their decision with respect to the Review Board's recommendation. In addition to GNWT's comments that follow in this letter, GNWT notes that the Government of Canada (GoC) will also

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be responding to the NSMA by way of a separate letter. Both the GNWT and the GoC have carefully considered NSMA's comments and have given full and fair consideration to the views expressed. GNWT and GoC share the view that the concerns NSMA has raised with respect to potential adverse impacts on the NSMA's asserted Aboriginal rights as a result of the Project have been meaningfully addressed through the EA process.

While the NSMA letter expressed support for most of MVEIRB's conclusions with respect to the Project, we note that two concerns were raised with respect to Measure 6-5: first, a concern about the independence of the Traditional Knowledge (TK) Elders group and the lack of requirement for the developer and Regulatory Authorities to consider and act upon the advice of the group; and second, a concern about whether the Terms of Reference (ToR) for the TK Elders group will be broad enough to take into consideration the holistic nature of TK.

The GNWT was pleased to see the April 25, 2016 letter from Dominion and the commitment from Dominion to work with communities to address the concerns over the TK Elders group. In its letter, Dominion informed the GNWT and GoC that it will be working with communities to address concerns around the independence of the TK Elders group, the ability to access outside expertise, public reporting, and to consider better ways to incorporate TK into the construction and operation of the Project. Dominion advised that it has distributed a draft ToR for the TK Elders group to Aboriginal parties for comment, and is planning to hold a workshop in June, 2016. This commitment addresses most of the concerns identified by NSMA around the TK Elders group.

Further, the GNWT is confident that the recommendations, advice and reports put forth by the TK Elders group will be given the appropriate consideration by Dominion. GNWT also notes that any advice provided to regulatory authorities such as the Wek'èezhìi Land and Water Board by the TK Elders group will be fully and fairly considered by the authorities during the regulatory process. Through the reporting requirements of Measure 13-3, 13-4, as well as Measure 6-5 itself, outcomes of the implementation will be made publicly available, including information on whether advice provided by the group is being implemented.

As a public watchdog and with responsibilities to Aboriginal parties to the Ekati Environmental Agreement (Environmental Agreement), the Independent Environmental Monitoring Agency (IEMA), as directed by Measure 6-5, will receive the report from the TK Elders group. This will function as another

mechanism providing assurance that recommendations and advice provided by the TK Elders group is considered by the developer.

In its letter to GNWT, NSMA noted the scope of Measure 6-5 was limited and requested TK be more fully incorporated into the Project and requested the development of a ToR. In the GNWT's view, Measure 6-5 does not preclude the incorporation of additional responsibilities into the role of the TK Elders group. The GNWT reiterates Dominion's commitment to engage with NSMA and other Aboriginal parties to the Jay EA to establish a ToR for the group. The GNWT does not believe that modification of the wording of Measure 6-5 is necessary in order to address the concerns of the NSMA.

For certainty, commitments made by the developer form part of the scope of the project as assessed by MVEIRB. RMs take the position that the Review Board's recommendation is subject to the implementation of the developer's commitments. The Project, as assessed and approved, therefore requires the implementation of all commitments.

GNWT notes that the NSMA have commended Dominion for their commitments to minimize social and environmental impacts of the Project and their willingness to work with Aboriginal peoples. GNWT RMs encourage the developer, as applicable, to give due consideration to the recommendations put forward by the NSMA.

GNWT RMs would also like to take this opportunity to reiterate the importance of other measures and mechanisms in place to prevent likely significant adverse impacts on the environment and accommodate potential adverse impacts to asserted Aboriginal rights of the NSMA. The Environmental Agreement is a legal instrument designed to ensure, among other things, signatories to the Environmental Agreement respect and protect land, water, wildlife and the land-based way of life essential to the well-being of Aboriginal Peoples. This obligation includes listening to community members' concerns, considering such concerns when making decisions about Ekati, and encouraging the developer to use TK in designing and implementing environmental plans and programs.

IEMA is established under the Environmental Agreement and is mandated to serve as a public watchdog of the developer and of regulatory processes related to Ekati, including participating in regulatory and other processes and making recommendations on various management plans and response frameworks.

The Environmental Agreement requires Dominion to report annually on the results of its environmental monitoring programs, detailing monitoring, mitigation and adaptive management measures. Aboriginal Peoples, as defined in the Environmental Agreement, have the opportunity to review Dominion's reports and advise GNWT whether they consider the reports satisfactory. GNWT encourages the NSMA to continue its active involvement in IEMA's activities. GNWT is providing a copy of this letter to IEMA for its consideration in carrying out its responsibilities.

The views expressed by the NSMA in their letter are important and the GNWT looks forward to continued NSMA participation in the regulatory phase of the Project. The GNWT emphasizes that consultation and accommodation with respect to Aboriginal and Treaty rights do not end with the responsible ministers' decision. The Project will now proceed to regulatory and other processes which will include opportunities for Aboriginal governments and organizations to offer input on authorizations and management plans and help ensure that potential adverse impacts to Aboriginal and Treaty rights, as necessary, are accommodated. The GNWT encourages the NSMA to participate in these processes and the developer's continuing engagement initiatives.

Thank you for taking the time to provide your views.

Sincerely,



Terry Hall
A/Assistant Deputy Minister
Planning and Coordination
Department of Lands

c. Shannon Cumming, Assistant Deputy Minister, Environment and Natural Resources

Derek Elkin, Assistant Deputy Minister, Health and Social Services

Mark Hopkins, Director General, Northern Resources and Environment,
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Matthew Spence, Director General, Northern Projects Management Office

David Burden, Regional Director General, Central and Arctic, Fisheries and Oceans Canada

Michele Taylor, Regional Director General, Prairie and Northern Region, Transport Canada

Mark Cliffe-Phillips, Executive Director, Mackenzie Valley Environmental Impact Review Board

Ryan Fequet, Executive Director, Wek'èezhìi Land and Water Board

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

Marc Casas, Executive Director, Independent Environmental Monitoring Agency