



Independent Environmental Monitoring Agency

P.O. Box 1192, Yellowknife, NT X1A 2R2 ▪ Phone (867) 669 9141 ▪ Fax (867) 669 9145

Website: www.monitoringagency.net ▪ Email: monitor1@yk.com

March 17, 2014

Robert Jenkins
Director, Renewable Resources and Environment
Aboriginal Affairs and Northern Development Canada
P.O. Box 1500
Yellowknife NT X1A 2R3

Dr. Ray Case
Assistant Deputy Minister, Corporate and Strategic Planning
Environment and Natural Resources, Government of the NWT
P.O. Box 1320
Yellowknife NT X1A 2L9

Brendan Bell
Dominion Diamond Ekati Corp.
1102-4920 52nd Street
Yellowknife NT X1A 3T1

Re: Proposed Changes to the Ekati Environmental Agreement

We wish to thank the Parties to the Ekati Environmental Agreement for the meeting held on March 13, 2014 in relation to the proposed changes to the Environmental Agreement. We found the meeting to provide a helpful exchange of views and explanations.

Please consider this letter as the Agency's preliminary response to the proposed changes to the Environmental Agreement.

Agency's Objectives with Proposed Changes

In discussing any changes to the Environmental Agreement, the Agency has two primary objectives that guide our actions: to promote effective environmental management of the Ekati Mine and to ensure that the Agency has the ability to continue to fulfill its mandate under the Environmental Agreement.

How the Proposed Changes to the Environmental Agreement Adversely Affect the Agency's Ability to Meet its Mandate

We indicated at the March 13 meeting that we had understood that the proposed changes would be largely administrative but were surprised to learn that the Government of Canada wishes to withdraw from the Environmental Agreement. The amendments are more than simply the NWT Minister of Environment and Natural Resources assuming the responsibilities of the federal Minister of Aboriginal Affairs and Northern Development under the Environmental Agreement. During the meeting, the parties (AANDC, GNWT and DDEC) requested that the Agency put in writing its views on how the proposed changes to the Environmental Agreement would adversely affect the Agency's ability to meet its mandate.

The administration of the Environmental Agreement involves departments of the federal government other than Aboriginal Affairs and Northern Development (AANDC). For example, Environment Canada (EC) and Fisheries and Oceans Canada (DFO) still retain significant responsibilities for environmental management at Ekati. This relates to part of the Agency's mandate as set out in Article 4.2(c)(v) where the "Monitoring Agency shall...compile and analyze relevant Environmental Quality data in order to review, report, or make recommendations concerning...monitoring, regulatory and related management programs and activities of Canada and the GNWT." Some of Canada's management programs and activities are carried out by EC and DFO, not AANDC.

Canada's obligations under Article 6.3(b) would also continue even with the proposed changes -- "the Operating Environmental Management Plan shall be developed and updated in conjunction and in co-operation with all relevant agencies of Canada and the GNWT and the Monitoring Agency." AANDC is not the only relevant agency of Canada with respect to the Operating Environmental Management Plan.

There are a number of proposed changes to the Environmental Agreement that would adversely affect the Agency's ability to carry out its mandate. For example, Article 4.5(b) obligates Canada to "give full and serious consideration to the reports and recommendations of the Monitoring Agency" and "respond to the Monitoring Agency with its written reasons for not accepting the recommendations that are not deemed appropriate." Canada, including its departments and agencies, would no longer be required under the Environmental Agreement to consider Agency recommendations or to respond to them where it disagrees, potentially reducing the effectiveness of our recommendations made under Article 4.2(c)(v).

Another example is found in Article 4.8 where Canada shall "cooperate with the Monitoring Agency and provide the Monitoring Agency with such information and assistance...which is required for the Agency to carry out its mandate." The proposed deletion of Canada from this Article would eliminate the obligation of Environment Canada and DFO to co-operate with the Agency. Such co-operation has proved over time to be necessary for the Agency to carry out its mandate.

Transboundary Issues and Obligations

It is not clear to the Agency how the Agency's mandate, or the Environmental Agreement itself, may be affected with regard to transboundary matters or issues of national interest should Canada withdraw. An example of this is the potential downstream impacts to water quality in the Coppermine River, used as a drinking water source for Kugluktuk, Nunavut and a frequently stated concern of the Kitikmeot Inuit Association, an issue upon which it has sought Agency input in the past.

Number of Directors

At the March 13 meeting, the Agency understood that the parties to the Environmental Agreement may have no objection to keeping the number of Directors at seven, the current complement. As we stated at the meeting, the Agency does have a preference for seven Directors to retain our current skills sets and expertise, and to ensure flexibility in maintaining a broader range of backgrounds.

Resolution Agreements

The signatories to the Environmental Agreement have proposed a number of changes in light of devolution. These changes, if accepted, also have implications for the two Resolution Agreements reached following disputes under the Environmental Agreement amongst the parties and the Agency. We recommend that the Resolution Agreements also be reviewed in light of devolution and the proposed changes to the Environmental Agreement.

The most significant item that requires attention in the Resolution Agreements, if the proposed changes to the Environmental Agreement proceed, would be establishment of a mechanism for making final decisions on any additional funding requests from the Agency as set out in the January 17, 2006 Resolution Agreement s. 2.3.

We noted in our recent meeting that should the proposed changes to the Environmental Agreement be adopted, it will also be necessary to make changes to the by-laws of the Agency as we are established as a registered non-profit Society in the NWT. This is not an urgent matter and we will take care of that after changes to the Environmental Agreement are made.

Next Steps

The Agency wishes to assure the Parties to the Environmental Agreement that we have no intention of delaying needed changes to the Environmental Agreement. We have acted expeditiously and will continue to offer our advice and views in a timely manner.

To ensure the Agency provides the best possible advice to the Parties, we will call a Special Meeting of our Society Members as authorized under s. 7.2 of our by-laws. This will allow us to hear the views of our Aboriginal Society members. We intend to issue

the notice for this Special Meeting on Monday March 17 and to hold the meeting on March 25. The purpose of the special meeting is to discuss the proposed changes to the Environmental Agreement as a result of devolution. We will hold the Special Meeting by teleconference and, for those parties who wish to attend in person, in our Boardroom. We request that the Parties to the Environmental Agreement come prepared to make a short presentation on the proposed changes and be prepared to answer any questions.

Following the meeting, the Agency may wish to provide additional comments. We look forward to continuing to work with the Parties towards the effective environmental management of the Ekati Mine.

Sincerely,

A handwritten signature in black ink, appearing to read "W.A. Ross".

Bill Ross
Chairperson

- cc. Grand Chief Eddie Erasmus, Tlicho Government
- Charlie Evalik, President, Kitikmeot Inuit Association
- Chiefs Edward Sangris and Ernest Bestina, Yellowknives Dene First Nation
- Chief Dora Enzoë, Lutsel K'e Dene First Nation
- Bill Enge, President, North Slave Metis Alliance
- Seth Bohnet, Acting Chair, Environmental Monitoring Advisory Board
- Johnny Weyallon, Chair, Snap Lake Environmental Monitoring Agency