

DE BEERS

GROUP OF COMPANIES

February 5, 2015

File: MV2005C0032

Angela Love
Regulatory Officer
McKenzie Valley Land and Water Board
Box 2130, 7th Floor, 4922 – 48th St.
Yellowknife, NT X1A 2P6

Dear Ms. Love:

Memorandum of Understanding with ENR regarding WWHPP and WEMP

De Beers Canada Inc. (De Beers) is pleased to provide the Board with a copy of the Memorandum of Understanding (MOU) that was signed between ourselves and Environment and Natural Resources, Government of Northwest Territories (GNWT) regarding the development of the Wildlife and Wildlife Habitat Protection Plan (WWHPP) and the Wildlife Effects Monitoring Program (WEMP) for the Gahcho Kué mine.

This MOU, signed on September 24, 2014 articulates a clear path forward for developing, reviewing, and updating the Gahcho Kué WWHPP and WEMP. It guides both the process of collaboration with the GNWT and the content and objectives of these two key wildlife programs.

As you know, the wildlife programs for the Gahcho Kue project were drafted prior to devolution (April 1, 2014), prior to the ascension of the NWT Wildlife Act (November, 2013) and prior to the effective date of the NWT Wildlife Act (November, 2014). As a result, the mechanism by which De Beers should seek GNWT input on our wildlife management and monitoring plans has not always been clear.

When the Environmental Impact Statement (EIS) was submitted in December of 2010, there was no regulatory mechanism for submission of a WWHPP or a WEMP. During the process of Environmental Impact Review, the need for these programs emerged. De Beers committed to developing both a WWHPP and a WEMP in consultation with GNWT and Aboriginal Parties. This commitment was acknowledged in the Mackenzie Valley Environmental Impact Review Board (MVEIRB) Panel Decision Report (July, 2013) approving the project. The Panel agreed with De Beers' approach and recommended that De Beers continue to collaborate with ENR and Aboriginal parties to develop the WWHPP and the WEMP.

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Since that decision, De Beers has continued to seek input from both ENR and from Aboriginal Parties on both the content and design of the wildlife programs. That input has been incorporated into each subsequent version of the WWHPP and the WEMP. De Beers will continue to seek input from parties regarding implementation and proposed revisions to these programs.

As anticipated, the new NWT Wildlife Act, Section 95, requires developers of major projects to submit wildlife management and monitoring plans. As agreed in the MOU, the WWHPP and the WEMP already submitted by De Beers fulfill that requirement. The MOU, and the continued collaboration with ENR staff, ensured that the Gahcho Kué programs were aligned with GNWT expectations and anticipated requirements under the Act. In addition to fulfilling the Wildlife Act requirements, the WWHPP, as it relates to wildlife habitat, has been approved by the Mackenzie Valley Land and Water Board (Board) in accordance with the Land Use Permit MV2005C0032 conditions 45 and 46. Proposed revisions to the WWHPP will be submitted to the Board for approval and major revisions to the WEMP will be posted to the Board Registry for public review.

De Beers is grateful to the various parties that have contributed to the evolution of the WWHPP and WEMP, including Aboriginal parties, government biologists, consultants, and regulators. The comments and recommendations received have strengthened the respective documents and have led to improvements in De Beers' plans for minimizing impacts on wildlife. De Beers will continue to work with ENR in accordance with the MOU on matters related to the WWHPP and the WEMP, and with Aboriginal Parties on matters related to these and other programs as described in the Engagement Plan, submitted in January 2015.

Sincerely,



Veronica Chisholm
Environmental Permitting Manager
Gahcho Kué Mine

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING is made this 24 day of September, 2014.

BETWEEN:

**De Beers Canada Inc.
("De Beers")**

-and-

**Government of the Northwest Territories,
as represented by the Department of Environment and Natural Resources
("GNWT")**

De Beers and GNWT are individually referred to as a "Party",
collectively referred to as the "Parties"

WHEREAS De Beers wishes to develop the Gahcho Kué Project (the "Project"), a diamond mine in the Northwest Territories (NWT);

WHEREAS De Beers filed an Environmental Impact Statement ("EIS") for the Project with the Mackenzie Valley Environmental Impact Review Board ("MVEIRB") and the Project has undergone an Environmental Impact Review and been approved by the MVERIB Panel and the Responsible Ministers;

WHEREAS De Beers is committed to sustainable development and the requirement to implement both a Wildlife Effects Monitoring Program ("WEMP") and a Wildlife and Wildlife Habitat Protection Plan ("WWHPP") for the Project;

WHEREAS GNWT promotes and supports the sustainable use and development of natural resources to protect, conserve and enhance the NWT environment for the social and economic benefit of all residents;

WHEREAS GNWT has responsibilities for wildlife management under the *Wildlife Act* and stewardship of wildlife resources, which includes the collection of baseline information, assessing and monitoring the status of wildlife, wildlife habitat, species at risk, wildlife health, assessing impacts on wildlife from human activities and regulating wildlife protection and use;

WHEREAS GNWT has valuable scientific expertise in wildlife monitoring and management;

WHEREAS GNWT has a responsibility to ensure minimal Project-related impacts to wildlife and wildlife habitat at local and regional scales;

WHEREAS the Parties wish to work together to establish wildlife programs and plans appropriate for the Project;

WHEREAS since submission of the EIS in December 2010, De Beers and GNWT have engaged in meetings to discuss and resolve issues related to wildlife, including a collaborative WEMP working group and workshop that culminated in De Beers submitting a WEMP and WWHPP to the MVEIRB in October 2012;

NOW THEREFORE this Memorandum of Understanding (“MOU”) represents the Parties’ discussions and understandings, and provides a mutually agreed upon approach for the continued development, implementation, review, and revision of the WEMP and WWHPP.

ARTICLE 1 APPLICABILITY

- 1.1 De Beers will follow through on its commitments to monitor wildlife by implementing a mutually acceptable WEMP and WWHPP and continue consultation and collaboration with GNWT on specific plans and outcomes.
- 1.2 In the event the Mackenzie Valley Land and Water Board does not include the WEMP and WWHPP as a condition of the Project Land Use Permit, this MOU, along with any follow-up measures required by the Panel, serves to ensure mutually acceptable wildlife monitoring and mitigation plans and programs are implemented for the Project.
- 1.3 The mutually acceptable WWHPP and WEMP developed under this MOU will, upon the effective date of the new NWT Wildlife Act, be considered as wildlife management and monitoring plans for the purpose of fulfilling Section 96 of the new Act.

ARTICLE 2 PRINCIPLES

- 2.1 The following principles guide this MOU:
- (a) Sustainable development of resources is essential to the long-term economic, cultural and social well-being of northern residents;
 - (b) Natural resources should be managed so that opportunities for future resource uses are maximized and maintenance of ecosystems is ensured;
 - (c) The conservation and management of wildlife and habitat shall be conducted in an integrated and collaborative manner;
 - (d) Conservation and development practices shall take into account the best available local and traditional knowledge, values and experience that are found among regular users of the environment, and shall take into account the information developed in academic institutions, industry and government;
 - (e) Adaptive management will be used to increase the effectiveness of monitoring and mitigation actions included in the WEMP and/or WWHPP; and
 - (f) Northern residents shall be assured meaningful input and participation in decisions related to conservation and resource development.

ARTICLE 3 DEFINITIONS

- 3.1 For the purposes of this MOU:

“Conservation” means the management and protection of wildlife and wildlife habitat in a manner that promotes the continued survival of wildlife and maintains ecosystem integrity;

“Effective Date” means the date on the first page of the MOU;

“Habitat” means the area or type of site where a species or an individual of a wildlife species naturally occurs, or on which it depends, directly or indirectly, to carry out its life processes;

“Local Knowledge” means a person’s knowledge about wildlife or habitat acquired through experience or observation;

“Local Study Area” or **“LSA”** means the area surrounding and including the Project Development Area, where there is reasonable potential for immediate environmental and human impacts due to ongoing Project activities;

“Natural Resources” means naturally occurring components of the environment that can be used for human purposes, consisting of flora and fauna and their habitat, including wildlife, forests and agricultural products and resources that cannot be replaced or renewed following extraction, including all minerals, aggregates and fossil fuels;

“Project Development Area” or **“PDA”** means the land or water area covered by the Project. This includes direct physical coverage (i.e., the area on which the project physically stands) and direct effects (i.e., the disturbances that may directly emanate from the project, such as noise), and is commonly described as a project’s direct “footprint”;

“Regional Study Area” or **“RSA”** means the area where there is the potential for large scale impacts on wildlife and wildlife habitat, including cumulative effects, and that will be relevant to the assessment of any wider-spread effects of the Project. For example, the regional study area may be defined by the range of a wildlife species of concern;

“Sustainable Development” means the development of natural resources in a manner that ensures economic, social and cultural needs are met while maintaining ecosystem integrity and biological diversity and without compromising the ability of future generations to meet their needs;

Traditional Knowledge” means knowledge and values that have been acquired through experience, observation, from the land or from spiritual teachings, and handed down from one generation to another;

“Wildlife” means all species of vertebrates and invertebrates found wild in nature in the NWT, and individuals of those species, except fish as defined in section 2 of the *Fisheries Act* (Canada);

“Wildlife Effects Monitoring Program” or **“WEMP”** identifies required wildlife monitoring activities at a LSA and RSA scale during the life of the Project. It is a follow-up program as defined under the *Mackenzie Valley Resource Management Act*. A follow-up program is meant to evaluate (1) the soundness of an Environmental Assessment or Environmental Impact Review for a proposed development; and/or (2) the effectiveness of mitigation measures or remedial measures imposed as conditions of approval for the Project. Guidelines to develop a WEMP are included in Appendix A of this MOU; and

“Wildlife and Wildlife Habitat Protection Plan” or **“WWHPP”** outlines the steps necessary to protect personnel, wildlife and wildlife habitat within the PDA. A WWHPP documents day-to-day standard operating procedures including mitigations, reporting, and best practices for a project site. Guidelines to develop a WWHPP are included in Appendix B of this MOU.

ARTICLE 4 PURPOSE

- 4.1 The purpose of this MOU is to:
- (a) Minimize or mitigate Project impacts on wildlife and wildlife habitat through the development of a mutually agreed-upon approach between GNWT and De Beers for the:
 - (i) Monitoring of wildlife through a WEMP, including collaboration on regional wildlife monitoring programs and cumulative effects assessment and mitigation for Valued Ecosystem Components (VEC) and other important species. This includes working collaboratively to minimize the impacts of access roads on wildlife; and
 - (ii) Protection of wildlife and wildlife habitat through a WWHPP.
 - (b) Establish a process between GNWT and De Beers for the reporting on, reviewing and revision of an agreed-upon WEMP and WWHPP using the principle of adaptive management.

ARTICLE 5 ROLES AND RESPONSIBILITIES

Wildlife Effects Monitoring Program

- 5.1 GNWT will:
- (a) Provide guidance on the contents of a WEMP and provide comments and recommendations for consideration by De Beers, including the need to revise the WEMP as per adaptive management;
 - (b) Provide guidance to companies with respect to participating in multi-party regional monitoring programs for species including grizzly bears, wolverines, caribou, wolves (as they relate to caribou) and raptors; and
 - (c) Organize regional monitoring and cumulative effects workshops to discuss wildlife monitoring programs with De Beers and other interested parties so that programs are statistically robust, standardized and conducted at

appropriate scales, and so that information collected is useful for mitigation and management.

5.2 De Beers will:

- (a) Develop and implement a mutually acceptable WEMP to monitor local and regional effects of the Project on wildlife and wildlife habitat;
- (b) Agree to revise the WEMP as needed, pending new information and as per adaptive management;
- (c) Give full consideration to the guidance provided pursuant to Article 5.1(a) of this Agreement and respond to GNWT comments and recommendations to the extent feasible;
- (d) Align Project-specific monitoring methods with government and other data collectors to facilitate comparison with other projects in the region, to the extent feasible;
- (e) Participate in regional monitoring and cumulative effects workshops organized by GNWT;
- (f) To the extent feasible, collect and share monitoring data that can be used by government and other partners to inform cumulative effects assessment, monitoring and management.

Wildlife and Wildlife Habitat Protection Plan (WWHPP)

5.3 GNWT will:

- (a) Provide guidance to De Beers on the contents of the WWHPP and provide comments and recommendations for consideration by De Beers, including the need to revise the WWHPP as per adaptive management.

5.4 De Beers will:

- (a) Develop and implement a mutually acceptable WWHPP to protect personnel, wildlife and wildlife habitat within the Project area;
- (b) Give full consideration and respond to GNWT comments and recommendations on the WWHPP; and
- (c) Agree to revise the WWHPP as reasonably required, taking into account new information and adaptive management.

5.5 The Parties will:

- (a) Work in collaboration with communities and Aboriginal governments to jointly develop and implement a Road Access Management Plan to

- proactively address uncertainties about wildlife mortalities, harvest and other issues as they arise along Project access roads;
- (b) Collaborate on the development and implementation of access monitoring along the Project access roads (e.g., check stations); and
 - (c) Collaborate to develop public education programs and materials that emphasize respect for caribou and hunter excellence.

Reporting, Reviewing and Revising the WEMP and WWHPP

5.6 GNWT will:

- (a) Participate in a Project review forum on wildlife topics pertaining to the WEMP and WWHPP. Participation will involve providing committee members with updates on GNWT wildlife programs and the review of Project wildlife monitoring and mitigation results;
- (b) Review and provide recommendations on De Beers wildlife based reports; and
- (c) Maintain wildlife data as it relates to the Project in its central data warehouse (e.g., the Wildlife Management Information System).

5.7 De Beers will:

- (a) Organize and lead the development of a Project review forum so that the WEMP and WWHPP can be regularly reviewed and revised as reasonably required;
- (b) Provide annual wildlife monitoring reports to GNWT for review and recommendation;
- (c) Accept, or reject GNWT recommendations with reasons;
- (d) Ensure De Beers reports, GNWT reviews and recommendations, and responses to GNWT reviews and recommendations are publicly available and provided to Aboriginal groups for their consideration; and
- (e) Provide all documentation in Article 5.7 to the Director of Wildlife and the Director of Conservation, Assessment and Monitoring, Environment and Natural Resources, GNWT.

- 5.8 In addition to participating in the project review forum, the Parties will meet at least once annually to discuss Project-related wildlife monitoring and mitigation topics.

**ARTICLE 6
DISPUTE RESOLUTION**

- 6.1 The Parties hereby undertake to use their best efforts to resolve, in an amicable and expeditious manner, any dispute that may arise between them under this MOU.
- 6.2 In the event a dispute cannot be resolved through discussion between the Parties' representatives, the Parties agree that the Director, Health, Safety and Environment of De Beers and the Deputy Minister of Environment and Natural Resources will discuss the dispute and work toward resolution.

**ARTICLE 7
EXECUTION IN COUNTERPART**

- 7.1 This MOU may be delivered by facsimile and may be executed in one or more counterparts, each of which will be deemed an original and all such counterparts together will constitute one and the same MOU.

ARTICLE 8
TERM, NOTICE, AMENDMENTS AND MISCELLANEOUS

- 8.1 This MOU will take effect on the Effective Date and will terminate five (5) years from the Effective Date. Unless otherwise agreed to by the Parties, the Parties will review this MOU following the first year of implementation with the intent to revise it with any mutually agreed upon amendments.
- 8.2 This MOU may be modified or amended at any time during the term of the agreement if agreed to in writing by the Parties.
- 8.3 Unless otherwise agreed upon by the Parties, the Parties agree to review this MOU one (1) year prior to its termination with the intent to renew it for another five (5) years or as determined at the time of review.
- 8.4 A Party may terminate this MOU by providing the other Party six (6) months written notice of its intent to terminate.
- 8.5 Where notice or other communication is required or permitted to be given pursuant to this MOU, it shall be delivered in writing by facsimile, personally, or by registered mail addressed as follows:

To: De Beers Canada Inc.

Attention: Permitting Manager


To: The Government of the Northwest Territories
Department of Environment and Natural Resources

Attention: Assistant Deputy Minister

- 8.6 This MOU does not create any partnership or agency relationship between GNWT and De Beers.
- 8.7 This MOU is not legally binding and is intended to reflect the understanding of GNWT and De Beers and their good faith intentions with respect to wildlife monitoring and the protection of wildlife and wildlife habitat.

IN WITNESS WHEREOF the Parties have executed this MOU as of the date first above written.

De Beers Canada Inc.

Per: 

Veronica Chisholm

**The Government of the Northwest Territories,
as represented by the Department of
Environment and Natural Resources**

Per: 

Jack Bird

Assistant Deputy Minister

Appendix A: Guidelines for a Wildlife Effects Monitoring Program

Wildlife Effects Monitoring Program (WEMP)

A WEMP encompasses effects monitoring at a Local Study Area (LSA) and Regional Study Area (RSA) scale during the life of the project. In effect, it is a follow-up program as defined under the *Mackenzie Valley Resource Management Act*. A follow-up program is meant to evaluate (1) the soundness of an environmental assessment or environmental impact review for a proposed development; and/or (2) the effectiveness of mitigation measures or remedial measures imposed as conditions of approval of the proposal.

A WEMP details larger scale monitoring objectives and methods (e.g., monitoring wildlife species threatened by potential increases in harvester access due to project roads). The WEMP provides an avenue to test the effectiveness of impact predictions made by a developer during a project's environmental assessment or EIR, including mitigation techniques employed during the construction, operation, closure and post-closure phase of a project. A WEMP does not include mitigation measures per se as it, by definition, is strictly a process for monitoring and testing specific effects questions. The results of this will be used to support adaptive management approaches if needed and to contribute to cumulative impact strategies. Results from a well-designed WEMP can also be used to inform best practices associated with future development projects in the NWT.

An effective WEMP should:

- Address outstanding wildlife concerns identified in measures, proponent commitments and recommendations stemming from an environmental impact assessment;
- Be focused on key Valued Ecosystem Components (VEC) and other species of importance that are typically found in or near the area surrounding the project;
- Be conducted within a study area that is appropriate to the proposed predictions for the project VEC;
- Have clear objectives and testable predictions, questions or hypotheses;
- Define the metrics that will be used to measure progress towards an objective or to test predictions, questions or hypotheses;
- Demonstrate that survey design, methodology, sample size, analysis and reporting will be capable of meeting the objectives of the monitoring program or detecting the predicted level of impact;

- Identify any underlying assumptions that may affect interpretation and validity of results;
- Use tested standardized protocols/methods/approaches that are in use by other development projects so that monitoring results can be combined at a regional scale;
- Be developed and reviewed in collaboration with Aboriginal partners, government, regulatory agencies, and other affected parties including other project proponents as appropriate; and
- Identify where traditional knowledge has been incorporated into monitoring program design
- Describe the process by which monitoring and mitigation techniques will be revisited and revised pending new information (e.g., developed using an adaptive management framework). Any changes made to methodologies should be made in consultation with appropriate parties in order to ensure consistency with other monitoring programs.
- Incorporate lessons learned from existing development projects in the north.

Appendix B: Guidelines for a Wildlife & Wildlife Habitat Protection Plan

Wildlife and Wildlife Habitat Protection Plan (WWHPP)

The WWHPP outlines the steps necessary to protect personnel, wildlife and wildlife habitat within the Project Development Area (PDA), also commonly described as a project's direct "footprint," and actions taken to minimize indirect impacts to wildlife and their habitat beyond the footprint (e.g. noise and dust). A WWHPP is a management tool to develop and implement clear procedures for employees and contractors in the field, to promote due diligence and to ensure compliance. A WWHPP should clearly demonstrate how wildlife measures and proponent commitments that came out of the assessment process, and regulatory permit conditions will be implemented and how implementation will be monitored.

At minimum, an effective WWHPP should include:

- Guidelines or procedures to reduce or prevent the potential for interaction between people and wildlife to ensure human safety;
- Guidelines or procedures to reduce or prevent any direct impacts from the project to wildlife and/or wildlife habitat;
- Day-to-day standard operating procedures (SOPs) that detail protocols to be used in the field as they relate to wildlife and wildlife habitat;
- any mitigation measures or design features identified through public input and community consultation
- Method(s) of data collection, monitoring, and reporting that will be used to document the implementation of mitigation measures, surveillance to identify risks to wildlife and human safety, response to wildlife incidents, and any other relevant wildlife observations;
- A description of training and education for employees and contractors on guidelines and SOPs for wildlife issues;
- Links to other management plans with mitigation measures that are relevant to wildlife (e.g. Waste Management Plan, Spill Response Plan); and,
- An adaptive approach to revising practices and procedures to reflect changing site conditions, activity levels or lessons learned in order to continue to mitigate potential effects on wildlife and wildlife habitat.
- Incorporation of lessons learned documented from existing development projects in the north.

