July 22, 2016

Honourable Minister Wally Schumann  
Minister of Environment and Natural Resources  
Government of the Northwest Territories  
P.O. Box 1320, Yellowknife NT, X1A 2L9

To, Minister Schumann:

On May 27th, 2016 Diavik Diamond Mines Inc. (Diavik) submitted a letter to your office requesting that you deny approval of the Wek’eezhii Land and Water Board’s (WLWB) recommended amendment to the Type A water license (W2015L2-0001). The amendment to the water license in question was recommended following a hearing before the Board in which Rio Tinto requested a weakening of existing limits of Total Suspended Solids (TSS) during the construction of the A-21 dyke.

Rio Tinto’s letter to the Minister is viewed by LKDFN as an example of Rio Tinto directly lobbying the Minister. This sidesteps the WLWB and undermines the WLWB authority. This also excludes Indigenous Parties from the process, making it procedurally unfair.

If Rio Tinto disagrees with the WLWB, then Rio Tinto should have initiated a judicial review of the Board’s recommendations. This is the correct course of action when a party disagrees with the outcome of an administrative board.

As the Minister is aware, the WLWB makes it decision by drawing on the input of its skilled staff, contracted experts from multiple fields of expertise, traditional knowledge holders, the proponent (in this case Rio Tinto), and interveners representing interests from across the North. What’s more, the board retrain legal counsel with significant expertise in administrative law and regulatory matters. The WLWB members themselves are appointed based on their connection to the North and their knowledge of issues affecting Northerners.

The WLWB is structured to ensure that the regulatory process if open, fair, and transparent. The perception of openness, fairness and transparency are what gives confidence to the interveners and proponents that the time, effort and expense of participating in the WLWB’s hearings are worthwhile. This is why the Minister’s actions are so disturbing to the LKDFN and our confidence in the regulatory process.
The LKDFN are not aware of any other instance in the Northwest Territories where a Minister has denied a recommendation from a regulatory board. This is for good reason. The Boards are well staffed with skilled individuals to assist the board in interpreting the evidence presented to them. The Board retains legal counsel to ensure their adherence to the principles of administrative law. The proponent and the interveners bring evidence, expertise and arguments to the hearing. This process ensures that the Board’s recommendations are well reasoned and thoughtful.

Hearings before administrative boards are well-trodden ground. The appropriate course of action for the dissatisfied is well established. If Rio Tinto does not agree with the WLWB’s recommendations they should seek judicial review. Lobbying the Minister undermines the entire process. Further, the Minister relying on lobbying to inform decisions erodes the public trust.

The LKDFN requests that the Minister rely on the significant expertise of the WLWB to inform his decision. In short, we request that the Minister accept the Board’s recommendation.

Sincerely,

Chief Felix Lockhart
Lutsel K’e Dene First Nation