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Wek'èzhì Land and Water Board  
#1-4905 48th Street  
Yellowknife, NT | X1A 3S3  
Attention: kdefrancis@wlwb.ca

**Re: Diavik Diamond Mines (2012) Inc. – W2015L2-0001: Intervention**

The Deninu Kue First Nation (DKFN) is pleased to provide the following intervention regarding Diavik Diamond Mines Inc. (DDMI) water licence amendment application (W2015L2-0001) to the Wek'èzhì Land and Water Board (WLWB) for Depositing Processed Kimberlite into Mine Workings. The DKFN was an active participant in the environmental review process of this proposed project and remains concerned with the decision of the Mackenzie Valley Review Board (MVRB) given the level of uncertainty with predicted effects. Our intervention builds upon our closing arguments from the environmental assessment where we concluded that given the level of uncertainty in the assessment of effects the Processed Kimberlite to Mine Workings (PKMW) project should not be approved. Our main concerns are summarized as 1) uncertainty regarding the level of predicted effects on water quality, and 2) the level of engagement between DDMI and the DKFN.

**Water Quality**

To address the concerns expressed by the DKFN and others on water quality during the review process the MVRB issued several measures in its Report of the Environmental Assessment (REA). These include:

- Measure 1: Diavik will meet water quality objectives at closure
- Measure 2: Diavik will work collaboratively with Indigenous groups to develop criteria for determining if water in the pit lake(s) is acceptable for cultural use
- Measure 3: Diavik will update modelling periodically to show whether water in the pits and Lac de Gras will meet the water quality objectives
- Measure 4: Diavik will establish an independent review panel for water quality modelling

We were pleased to see Measure 4, as this was a recommendation put forth by the DKFN and other parties during the EA review. We also acknowledge that DDMI has revised its water modelling since the EA review and that the established Independent Review Panel (IRP) completed a report (dated October 15, 2020) putting forth its conclusions on the updated modelling. In its response the WLWB information requests, DDMI (and its consultant) presented the report "Diavik Mine – Hydrodynamic and Water Quality Modelling of Pit Lakes and Lac de Gras (submitted on October 16, 2020 [Appendix C of DDMI Response to the WLWB Information Request Attachment #2]). It is unclear if this report addressed the uncertainties identified in the IRP's review of the hydrodynamic and water quality modelling. Normally,

a technical session could have been held during the water licence review process to address these questions and to provide additional certainty in the review process. Failing this, the DKFN is at the mercy of the work plan set forth by the WLWB and hopes that these questions can be resolved during the public hearing.

Measure 2 is of particular interest to the DKFN as the MVRB agreed with our concerns that the impacts to cultural use were not effectively assessed during the EA review process and significant effects were likely to occur. It is our expectation that this measure would be addressed through the regulatory process and this criteria be included as a provision to the water license. However, in its response to the WLWB on how the REA measures will be incorporated into the PKMW project, DDMI provided the following response regarding draft criteria for determining if water in the pit lake(s) is acceptable for cultural use:

*“DDMI is not requesting consideration of criteria that address REA Measure 2 as part of the Water Licence Amendment. On September 17, 2020 DDMI proposed Condition 18 in Part H of W2015L2-0001 (track change version) to address REA Measure 2. DDMI expects the wording of the condition will be finalized as part of the Water Licence Amendment and that this satisfies the requirement to ensure Measure 2 is met before DDMI commences deposition of processed kimberlite into any Mine Working. A status update on the progress to develop this draft criteria has been provided in Appendix B. As made clear in the summary, at this time we have not completed this work with all eight indigenous groups.”*

For completeness, Condition 18 in Part H that DDMI proposed, which it purports addressed Measure 2, reads:

*“Before deposition of Processed Kimberlite in Mine Workings the Board must approve cultural use criteria that fulfil the objective that water in the top 40 m of the pit lake(s) is suitable for cultural use where success is demonstrated by pre-deposition water quality modelling.”*

Following this logic, Measure 2 would not be addressed until after issuance of the amended water license. Therefore, the uncertainty about the predicted effects, and the significance of these effects, will remain.

We acknowledge that Measures 1 and 3, as well as other commitments made by DDMI, are designed to ensure water quality objectives are met, which would ensure effects on water quality are minimized, reduced and avoided where possible. But at this point, the review process is proceeding without fully understanding what the water quality objectives will be when it comes to ensuring water is acceptable for cultural use.

### **Engagement**

Measure 5 was established to address the insufficiencies in DDMI’s engagement to communicate the potential effects of the project and to understand how the project might affect Indigenous people’s cultural use of Lac de Gras. In its response to the WLWB on how the REA measures will be incorporated into the PKMW project, DDMI provided the following response regarding an updated engagement plan:

*“DDMI is not requesting for any PKMW-specific Engagement Plans to be considered as part of the Water Licence Amendment. On September 17, 2020 DDMI proposed Condition 14 in Part B of W2015L2-0001 (track change version) to address REA Measure 5. DDMI expects the wording of the condition will be finalized as part of the Water Licence Amendment and that this satisfies the requirement to ensure Measure 5 is met before DDMI commences deposition of processed kimberlite into any Mine Working. A summary of engagement initiatives/activities to develop Engagement Plans has been provided in Appendix B. As made clear in the summary, at this time we cannot indicate and/or confirm that all eight indigenous groups have accepted updated protocols.”*

For completeness, Condition 14 in Part B that DDMI proposed, which it purports addressed Measure 5, reads:

*“The Licensee shall operate in accordance with the approved PKMW Engagement Plan, review the Plan annually, and submit updated to this Plan to the Board for approval at the following times:*

*c) a minimum of ninety (90) days prior to any proposed changes to the approved Plan, and,*

*d) upon the request of the Board.”*

Similar to our comment on Measure 2 above, by following this approach, this measure would not be addressed until after issuance of the amended water license.

It is our expectation, as identified in Section 128 of the *Mackenzie Valley Resource Management Act*, that the enactment of measures necessary to prevent significant adverse impact is a critical step in the co-management of natural resources and that these measures are legally binding. In this regard, the MVRB made the following statements in the REA:

- The Review Board is of the opinion that concerns related to significant impacts raised by intervenors will be addressed by the suite of measures prescribed by the Review Board. (page 75)
- Additional follow-up is required to confirm the implementation and effectiveness of measures from this environmental assessment. Diavik, government, and regulatory authorities must communicate their actions (including any adaptive management) to implement the environmental assessment measures. The Review Board acknowledges that specific approaches to reporting may differ from year to year or between government, Diavik, the Wek’èezhii Land and Water Board, and other regulators. In particular, the Wek’èezhii Land and Water Board explains in its Reasons for Decision documents how it incorporates environmental assessment measures into licence conditions, or otherwise takes action to implement the measures. (page 93)
- Part B: Regulatory authorities will report as described in Part A, above, or will clearly and explicitly include details about implementation of environmental assessment measures in Reasons for Decision documents whenever a regulatory decision (including future changes to a licence, permit, or management plan) relates to a Project environmental assessment measure. If

relying on Reasons for Decision, regulatory authorities will provide a summary of how they are implementing each measure directly to the Review Board in a reasonable time after the Reasons for Decision are published. (page 94)

Despite these references regarding the documentation of how environmental assessment measures are incorporated into licence conditions, the WLWB stated in its letter to DDMI on June 5, 2020 “that the Review Board did not require these measures to be implemented prior to the issuance of an amended water licence.” On October 22, 2020, the WLWB communicated to DDMI that it “will consider how DDMI has addressed Measure 5 through the PKMW Type A Amendment Proceeding.”

Finally, Measure 6 from the REA, which was addressed to the Government of the Northwest Territories (GNWT), identified the need to improve engagement and the adaptive management process to measure and respond to adverse cultural well-being impacts from the project. The GNWT was to meet with potential affected Indigenous communities within one year of Ministerial approval of the REA, which means this would have to be completed by June 2021. The intent of this meeting, which is also expected to occur annually, is to prioritise cultural well-being impacts related to diamond mines, evaluate the effectiveness of programs to address these impacts, and discuss improvements to program or support for new community based programs.

The DKFN raised these concerns in its letter to the WLWB on September 4, 2020 regarding the draft work plan for the water licence amendment process, and it remains unclear how Measures 2, 5 and 6 are being addressed, particularly as these relate to the conduct of additional and more effective engagement and addressing the impacts to cultural use and well-being. At this point in the permitting review process, the DKFN is of the opinion that the level of uncertainty remains regarding the understanding of and the mitigation of potential impacts identified during the EA review process. We are seeking assurances that the measures identified in the REA and the commitments made by DDMI will be incorporated into the amended water license and contingencies are clearly outlined if these measures and commitments are not met.

In closing, DKFN has an obligation to its band membership to ensure that “As long as the sun shines, rivers flow and grass grows” based on our Treaty with the crown, future generations should be also be able to practice their inherent right to hunt, fish, trap and gather in co-existence in our traditional territory. Where there is impact and loss, then we must be given the opportunity for reasonable informed consent, consultation and accommodation benefits. This duty is vested with the crown in their fiduciary obligation to DKFN based on our Treaty and should be addressed within this process.

Sincerely,



Chief Louis Balsille

cc. Richard Simon, DKFN Resource Management Coordinator ([ima@dkfn.ca](mailto:ima@dkfn.ca))

Dr. Marc d'Entremont, DKFN Technical Advisor ([mdentremont@lgl.com](mailto:mdentremont@lgl.com))