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September 18, 2020

File: MV2005C0032 &
MV2005L2-0015

President Lloyd Cardinal
Fort Resolution Métis Government
P.O. Box 137
Fort Resolution NT X0E 0M0

Sent via Email

Dear Lloyd Cardinal:

**Request for the Granting of Late Intervener Status
De Beers Canada Inc. – Gahcho Kue Project – Kennady Lake, NT**

The Mackenzie Valley Land and Water Board (MVLWB or the Board) met on September 17, 2020 and considered your request for the late granting of Intervener status regarding Amendment #5 Application for Land Use Permit MV2005C0032 and Amendment #3 Application for Water Licence MV2005L2-0015 (Applications), as submitted by De Beers Canada Inc. (De Beers) for the Gahcho Kue Project.

The Board has decided not to grant Fort Resolution Métis Government Intervener status in the upcoming Public Hearing on the Applications. However, the Intervention Report and presentation submitted with your request will be allowed as written submissions, and Fort Resolution Métis Government may make an oral presentation and ask questions at the Public Hearing as a Member of the Public, as set out in the Board's [Rules of Procedure](#). The attached Reasons for Decision provide further details.

If you have any questions regarding this matter please feel free to contact Shelagh Montgomery, the Board's Executive Director, at (867) 766 7457 or smontgomery@mvlwb.com.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Mavis Cli-Michaud".

Mavis Cli-Michaud
MVLWB, Chair

Attachment: Reasons for Decision

Copied to: Distribution List
William Liu, De Beers Canada Inc.



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Reasons for Decision

Ruling on Fort Resolution Métis Government Request for Intervener Status in Public Hearing	
File Numbers	MV2005C0032 (Type A Land Use Permit) MV2005L2-0015 (Type A Water Licence)
Company	De Beers Canada Inc.
Project	Gahcho Kue Mine, Kennady Lake, NT
Date of Decision	September 17, 2020

These Reasons for Decision set out the Mackenzie Valley Land and Water Board’s (the MVLWB/Board) ruling on a request from the Fort Resolution Métis Government to consider the granting of late intervener status in the public hearing for amendment applications from De Beers Canada Inc. (De Beers) for their Gahcho Kue Mine.

A summary of De Beers’ Type A Land Use Permit (Permit) MV2005C0032 and Type A Water Licence (Licence) MV2005L2-0015 Amendment Applications is provided in Section 1 below. The request from the Fort Resolution Métis Government is set out in Section 2. Sections 3 and 4 set out the Board’s decision and reasons. Section 5 sets out the Board’s conclusions.

1.0 Summary of the Applications

On March 6, 2020, De Beers submitted Amendment #5 Application for their Type A Permit MV2005C0032 and Amendment #3 Application for Licence MV2005L2-0015 (Applications). Following internal review, Board staff deemed the applications incomplete on March 16, 2020. On March 17, 2020, De Beers submitted additional information. The public review of the Applications commenced on March 19, 2020.

The amendments have been requested to accommodate changes to the mine plan resulting from additional economically viable ore that has been identified between the 5034 pit and the Tuzo pit. Incorporation of this ore (approximately 8 Mt) into the mine plan will require removal of additional mine rock (up to 65 Mt). The key changes to the Project associated with this mine plan update include:

- Extended mine life (operational life from about 11.6 to 13.6 years);
- Expansion of existing coarse processed kimberlite pile to store additional coarse processed kimberlite as well as incorporating mine rock;
- Expansion of the perimeter dykes of the fine processed kimberlite containment facility; and
- Enlarged 5034 and Tuzo pits.

1.1 Engagement

Engagement – Pre-Application

An Engagement Record was included in the Applications from De Beers, noting the various times and methods that engagement had taken place. Included in the pre-application engagement conducted by De Beers was a workshop to provide an update on the submission of the amendments to the Licence and Permit for the additional ore. A detailed record of the meeting included the presentation, a list of questions/comments asked, and responses provided. A list of attendees included representatives from:

- North Slave Métis Alliance
- Łutsel K'e Dene First Nation
- Yellowknives Dene First Nation
- Northwest Territory Métis Nation
- Deninu Kue First Nation
- Tłıchq Government
- Ni Hadi Xa
- Fisheries and Oceans Canada
- Government of the Northwest Territories (Department of Environment and Natural Resources and Department of Lands)
- Board staff
- De Beers

Engagement – MVLWB Regulatory Process

The Applications were deemed complete and sent for review on March 19, 2020. The notice of the review getting underway was sent very broadly using the Board's distribution list and included, but was not limited to, representatives from:

- Dene Nation
- Deninu Kue First Nation
- Fort Resolution Métis Council
- Hamlet of Fort Resolution
- Kátł'odeeche First Nation
- Łutsel K'e Dene First Nation
- Ni Hadi Xa
- North Slave Métis Alliance
- Northwest Territory Métis Nation
- Salt River First Nations
- Tłıchq Government
- Tłıchq Lands Protection Department
- Town of Fort Smith
- West Point First Nation
- Yellowknives Dene First Nation

A Technical Session to discuss specific issues about the Applications was held July 7-9, 2020. Participants included representatives from:

- Fort Resolution Métis Government
- Tłı̨chǫ Government
- Ni Hadi Xa
- North Slave Métis Alliance
- Government of the Northwest Territories (Department of Environment and Natural Resources and Department of Lands)
- Fisheries and Oceans Canada
- Environment and Climate Change Canada
- Board staff
- De Beers

A Pre-Hearing Conference was held on August 27, 2020. Participants included representatives from:

- North Slave Métis Alliance
- Fort Resolution Métis Government
- Government of the Northwest Territories (Department of Environment and Natural Resources and Department of Industry, Tourism and Investment)
- Fisheries and Oceans Canada
- Environment and Climate Change Canada
- Board staff
- De Beers

2.0 Fort Resolution Métis Government Request

On September 11, 2020, Fort Resolution Métis Government submitted a request for the late granting of Intervener status in the Public Hearing scheduled to take place September 30 to October 1, 2020.

In accordance with the Work Plan Version 3¹ developed by the Board for this proceeding, written Interventions, and hence notice to the Board of a party's interest in being an Intervener in the proceeding, were due August 25, 2020. Interventions were submitted by that date by the Government of the Northwest Territories and Fisheries and Oceans Canada. A Pre-Hearing Conference was held by teleconference on August 27, 2020. De Beers provided responses to Interventions on September 4, 2020 and presentations for the Public Hearing from Interveners were received on September 10, 2020.

Along with its request, Fort Resolution Métis Government submitted an Intervention Report and presentation version of their proposed Intervention. In the emailed letter, it was explained that the reason for the late submission was due to minimal internal capacity. Fort Resolution Métis Government also explained that as they represent the constitutionally protected rights and interests of their Métis members for their traditional territory, which includes the lands covered by the Gahcho Kue Project, only they can directly support and speak for their members' interests and needs, as opposed to the Northwest Territory Métis Nation.

¹ See [Work Plan \(Version 3\)](#), distributed August 18, 2020.

On September 14, 2020, De Beers and Interveners were asked to provide comments for the Board's consideration on the request from Fort Resolution Métis Government by September 15, 2020. De Beers responded that they welcomed comments and recommendations and always respond to the best of their ability. De Beers also provided examples of engagement that had occurred, both prior to the submission of the amendment Applications, and more recently, directly with the Fort Resolution Métis Government. The Government of the Northwest Territories-Environment and Natural Resources responded that they had no concern with the request.

The Fort Resolution Métis Government was given the opportunity to reply to any comments from De Beers and Interveners by September 16, 2020. The Board did not receive a response from Fort Resolution Métis Government in reply to comments received by De Beers or the Government of the Northwest Territories.

3.0 Decision

The Board has decided not to grant Fort Resolution Métis Government Intervener status in the Public Hearing on the Applications.

The Board will, however, accept the Intervention Report and presentation submitted by Fort Resolution Métis Government as written submissions on the Applications. In addition, Fort Resolution Métis Government will have the opportunity to make an oral presentation and ask questions of De Beers and Interveners at the hearing, under the MVLWB's *Rules of Procedure* allowing for participation by Members of the Public.

4.0 Reasons for Decision

The Board has reached its decision with a view to fulfilling its statutory obligations and ensuring fairness to those parties who have complied with timelines established in Work Plan Version 3, while also ensuring Fort Resolution Métis Government has a fair and reasonable opportunity to provide meaningful input through the public hearing process.

Subsection 47(1) of the *Waters Act* requires the Board to make a recommendation on a water licence application within a period of nine months after the day on which an application is deemed complete and the review process begins. It is therefore important for the Board to operate with reasonable timeliness and efficiency. The Board provides ample public notice of its proceedings to a broad distribution list, which in this case included the Fort Resolution Métis Council. The work plan for a Public Hearing proceeding is developed with input from potentially interested parties.

The Board notes that members of Fort Resolution Métis Government were engaged in the pre-application and application processes and had many opportunities to submit an Intervention within the timeframe established in Work Plan Version 3. In the circumstances and because Fort Resolution Métis Government had notice and numerous opportunities to address its role in this proceeding earlier, the Board decided to not grant Intervener status to Fort Resolution Métis Government. In this case, the Board has reviewed the concerns and recommendations outlined in the Intervention Report and presentation submitted by Fort Resolution Métis Government. Although the material is entitled "Intervention Report," the contents of the report do not necessarily require the granting of Intervener status. The Board is satisfied the scope and nature of the materials is such that the report and presentation can be meaningfully presented under the Board's *Rules of Procedure* which allow Members of the Public to participate and provide comments to the Board at a public hearing.

The Board recognizes its responsibilities to consider, among other things, the concerns of Indigenous people and the importance of conservation to the well-being and way of life of Indigenous peoples to whom Section 35 of the *Constitution Act* applies. In the Board's view, Fort Resolution Métis Government should have the opportunity to present their concerns and recommendations, and to ask questions of De Beers and Interveners. These opportunities can be achieved by allowing into the proceeding the proposed intervention documents but without granting Intervener status. Fort Resolution Métis Government will have a chance to supplement its written materials with an oral presentation, and to ask questions, at the Public Hearing.

Given the late submission of the request for Intervener status, the Board has determined that allowing the written materials and an oral presentation, under the provisions for presentations by Members of the Public, satisfies the Board's statutory requirements, in a manner that is procedurally fair and allows the Public Hearing to proceed in accordance with the expectations set in Work Plan Version 3.

5.0 Conclusion

For the reasons set out above, the Board has decided that Fort Resolution Métis Government can participate in the Public Hearing as a Member of the Public without being granted Intervener status. The Intervention Report and presentation submitted by Fort Resolution Métis Government will be allowed as written submissions, and Fort Resolution Métis Government may make an oral presentation and ask questions at the Public Hearing.

The Board intends to proceed with the regulatory process currently underway for the Amendment Applications as submitted by De Beers (i.e., Type A Land Use Permit (MV2005C0032) and Type A Water Licence (MV2005L2-0015)).

SIGNATURE

Mackenzie Valley Land and Water Board



Mavis Cli-Michaud, Chair

September 17, 2020

Date