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October 28, 2020

RE: Fort Resolution Métis Government Request for Intervenor Status and Submission of Intervention Report

Dear Ms. Bams and Jokela,

Fort Resolution Métis Government (or “FRMG”) is writing to request the granting of intervenor status for the forthcoming hearing for the Arctic Canadian Diamond Company Ltd. (Arctic) W2020L2-0004 – Ekati - Type A Water Licence Amendment Application W2021D0005 - Ekati - Type A Land Use Permit Application. FRMG represents the constitutionally protected rights and interests of our Métis members in our traditional territory which includes the lands covered by the Ekati mine. Only FRMG can directly support and speak for our members’ interests and needs. It is for this reason that we seek intervenor status.

FRMG was unable to attend the Pre-hearing Conference due as it overlapped with important dates for community harvesting. FRMG does take the obligation to our member’s and the protection of their constitutionally protected rights seriously and therefore requests that we be provided time to present FRMG members concerns at the hearing. Please see the attached for our Intervention Submission. We look forward to the opportunity of fully participating in the hearing process.

Thank you,

Arthur Beck,
President, Fort Resolution Métis Government

ORIGINAL SIGNED

Attachments: FRMG Intervention



Fort Resolution Métis Government

INTERVENTION REPORT

ARCTIC CANADIAN DIAMOND COMPANY W2020L2-0004 – Ekati - Type A Water Licence Amendment
Application W2021D0005 - Ekati - Type A Land Use Permit Application



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Summary

Fort Resolution Métis Government (FRMG) represents the rights and interests of our Métis members in our traditional territory. We have a responsibility to ensure that resource extraction projects, including mining do not infringe on the traditional way of life of both present and future members of our community. FRMG members are made up of Métis peoples, as recognized by Section 35 of the Canadian 1982 Constitution, who practice their rights and interests, as did our ancestors, in all parts of our traditional territory including the Ekati Mine Site.

FRMG considers the area under review for the Land use Permits (W2021X0004 and W2021D0005) and amendment to Water Licence (W2012L2-0001) to be within our lands of inherent stewardship and responsibility, as passed down from our ancestors. Further, the Point Lake area is a highly valued area, which FRMG membership continues to use and which is critical to present and future exercise of our rights and interests. FRMG is a recognized Métis government, our FRMG members have unceded rights and privileges that are protected under Section 35 of the Canadian Constitution. On these bases, **FRMG is seeking status as an intervenor in these hearing proceedings.**

The Point Lake area is important to FRMG members and integral to the practice of members' rights. **FRMG is concerned that the Point Lake Project will impose significant impacts on our members' way of life; therefore, we request that the Point Lake Project undergo a full environmental assessment.**

In this intervention submission FRMG has identified the following recommendations:

FRMG Recommendation #1: FRMG recommends that Arctic complete the review and on-site assessment of planned activities by recognized traditional- and cultural knowledge holders of affected Indigenous groups, including FRMG, prior to the finalization of the design plans and start of construction activities. As part of this Arctic to commit to supporting the completion of an updated FRMG Traditional Knowledge Study either directly or through existing funding programs.

FRMG Recommendation #2: FRMG recommends that Arctic commit to using and incorporating any Traditional Knowledge provided by FRMG or other Indigenous groups in the assessment of its plans in an appropriate context and in keeping with the intent and terms of its Traditional Knowledge Management Framework



and any established Traditional Knowledge Protocols of participating Indigenous Groups.

FRMG Recommendation #3: FRMG recommends the Jay REA measures designed to mitigate impacts associated with cumulative effects be made part of the conditions for any approved permits in the project area, including those associated with the project under review.

FRMG Recommendation #4: FRMG recommends the Jay REA measures designed to mitigate impacts associated with cumulative effects to cultural well-being be made part of the conditions for any approved permits in the project area, including those associated with the project under review.

Alternatively, Arctic and the GNWT must demonstrate that baseline conditions to these valued components have improved since the Jay REA was released prior to any project-related activities occurring.

FRMG Recommendation #5: FRMG recommends the Jay REA measures designed to mitigate impacts associated with cumulative effects to community and cultural well-being be made part of the conditions for any approved permits in the project area, including those associated with the project under review.

FRMG Recommendation #6: FRMG recommends Arctic's commitment to carry forward the Jay Measures it has identified to the MVEIRB in its IR-response become a part of the conditions for any approved permits associated with any approved permits associated with the project under review.

FRMG Recommendation #7: FRMG recommends that the GNWT commits to carry forward the Jay REA measures designed to mitigate impacts associated with cumulative effects to community well-being, including the reporting of those efforts and commit to working with FRMG to improve FRMG engagement and participation in the implementation of Jay REA measures.

FRMG Recommendation #8: FRMG recommends that Arctic commits to the conditions of the adaptive management measure Jay 13-1 when undertaking adaptive management actions of mitigation measures or of identified impacts associated with caribou, cultural or community well-being.

FRMG Recommendation #9: FRMG recommends that an adaptively modified version of the WEMP based on further public review be developed for Point Lake operations as a condition of the project to proceed.



FRMG Recommendation #10: FRMG recommends that Arctic complete a fully informed assessment of the potential downstream effects to Conner Lake, Alexia Lake, and their outflows associated with the dewatering and rewatering Point Lake, including anticipated hydrological changes and potential impacts to fish and fish habitat. FRMG should have an opportunity to review and comment on this assessment, including the adequacy of baseline data collection, measures of “success”, and the development of appropriate thresholds.

FRMG Recommendation #11: FRMG recommends that Arctic be required to collaborate with Indigenous governments to develop the Fisheries Offsetting Plan to ensure that habitat offsets are adequate in terms of kind, proximity, condition, and quantity from the perspective of Indigenous people. Arctic should also be required to collaborate with Indigenous governments in the development and implementation of the Fish-Out Plan.

FRMG Recommendation #12: FRMG recommends that the Aquatic Effects Monitoring Program be amended to include effects to the Point Lake watershed downstream of Point Lake. Monitoring should include water quantity and quality as well as effects to fish populations in Conner Lake, Alexia Lake, and their outflows.

FRMG Recommendation #13: FRMG recommends that the Aquatic Effects Monitoring Program for Point Lake be amended to include thresholds and triggers developed in collaboration with FRMG. FRMG should have a role in reviewing monitoring results as well as decision-making under any adaptive management frameworks.

Recommendation #14: FRMG recommends that Arctic complete predictive water quality modelling to show that the KPSF will not meet assimilative capacity due to inputs from the Point Lake project.

Recommendation #15: FRMG recommends that the Water Licence amendment require Arctic to complete thermal modelling of the Point Lake WRSA thermal cover based on best available climate change data to date. In the Waste Rock Storage Area Design Report, Arctic should include a predicted date of thermal cover thaw, if available, as well as a discussion regarding expected effects of thermal cover thaw on local water sources, should the modelling prove inaccurate.



Recommendation #16: FRMG recommends that Arctic commits to supporting FRMG co-development of an engagement protocol.

Recommendation #17: FRMG recommends that Arctic commit to negotiation of an impact benefit agreement with FRMG in good faith.

Recommendation #18: FRMG recommends that Arctic commit to involving FRMG in all monitoring programs associated with Point Lake Project. FRMG should be provided capacity support and involved in monitoring related activities, including the development of monitoring programs, methods development, sampling, data analysis and interpretation, and GIS analysis, as well as provided all monitoring data and reports for review and comment.



Introduction

Fort Resolution Métis Government (FRMG) represents the rights and interest of our Métis members in our traditional territory. It is our responsibility to ensure that our members have continued access to our traditional way of life. Our members practice rights as our ancestors did: by hunting, gathering, fishing, and harvesting throughout our traditional territory, which includes the Point Lake project area. We have always considered the area under review for the amendment to license W2020L2-0004 within our lands of stewardship, responsibility, and interest. These lands have been a part of our home for over 300 years. FRMG is a recognized Métis government, our FRMG members have un-ceded rights and privileges that are protected under Section 35 of the Canadian Constitution. We seek to protect these rights through participation in the Water Licence Hearing proceedings associated with this amendment.

As with all areas within our traditional territory, the Point Lake project area is significant for FRMG members to practice their rights and interests. We consider the Point Lake Project to include a number of uncertainties - data is either not yet available or has been made available without sufficient time for review. For example, FRMG is still waiting to review data collected on the hydrological connections between Point Lake and the downstream waterbodies, data on fish habitat within the Point Lake watershed, and predictive water quality monitoring associated with the WRSA seepage. Without this information the full effects of the project cannot be predicted or mitigated appropriately. The Point Lake area is also an important place for FRMG members and integral to the practice of members' rights. **FRMG is concerned that the Point Lake Project will impose significant impacts on our members' way of life; therefore, we request that the Point Lake Project undergo a full environmental assessment.**

For these reasons, **FRMG requests that the Point Lake Project be subject to a full environmental assessment.**

Should the project not be subject to a full environmental assessment, FRMG will provide comments and concerns at the Wek'eezhi Land and Water Board hearing scheduled for November 23 -26, 2021.



Structure of the Intervention

This Intervention Report is intended to convey to the WLWB the priority issues of concern for FRMG with the W2020L2-0004 amendment application. The primary focus of the Intervention Report is on the following key considerations for this review process:

- Traditional Knowledge
- Caribou
- Fish and Fish Habitat
- Water Management
- Engagement



Traditional Knowledge

In completing its assessment of the project's use and consideration of Traditional Knowledge (TK), FRMG has reviewed the following documents:

- Arctic's responses from the technical meeting proceedings;
- Arctic's response to FRMGs Traditional Knowledge-related information requests (IRs);
- Arctic's response to the Mackenzie Valley Environmental Impact Review Board (MVEIRB)'s IRs;
- The GNWT's response to MVEIRB's IRs;
- The WLWB's Notice of Preliminary Screening Determination letter to the MVEIRB; and
- The MVEIRB's letter October 18, 2021, letter to the WLWB to not refer the project to EA.
- GNWT Jay Project 2020-2021 Annual Reporting from Regulatory Authorities report

General use and consideration of traditional knowledge for the Point Lake project

FRMG is generally concerned with how Traditional Knowledge (TK) has been used in the development of the project application. Specifically, FRMG is concerned that the Traditional Knowledge used for the project has not been specific to the project under review. Rather, the Traditional Knowledge has been applied from previous projects and studies. Traditional Knowledge is very context-based and will vary according to the knowledge holder and the considerations being assessed. Not all Traditional Knowledge will be transferable to the Point Lake project. It is therefore important that FRMG knowledge holders are consulted on when Traditional Knowledge is applied to new Ekati developments or project components. This process existed following the implementation of the Jay Measures on traditional knowledge. Those Measures also sought to involve cultural knowledge holders to ensure that cultural values of affected Indigenous groups were not inadvertently impacted by project activities.

FRMG acknowledges that conditions during the pandemic made it difficult to support the conduct of additional Traditional Knowledge research for the Point Lake project. FRMG has recommended pandemic adaptive measures such as the sharing of drone footage with FRMG Knowledge holders and looks forward to reviewing that footage. FRMG believes that the review and collaboration on the revision of plans with FRMG



knowledge holders needs to occur before designs are finalized and construction begins if the Project is approved.

FRMG Recommendation #1: FRMG recommends that Arctic complete the review and on-site assessment of planned activities by recognized traditional- and cultural knowledge holders of affected Indigenous groups, including FRMG, prior to the finalization of the design plans and start of construction activities. As part of this Arctic to commit to supporting the completion of an updated FRMG Traditional Knowledge Study either directly or through existing funding programs.

FRMG Recommendation #2: FRMG recommends that Arctic commit to using and incorporating any Traditional Knowledge provided by FRMG or other Indigenous groups in the assessment of its plans in an appropriate context and in keeping with the intent and terms of its Traditional Knowledge Management Framework and any established Traditional Knowledge Protocols of participating Indigenous Groups.

Carrying-over relevant Jay Measures on cultural and community well-being

From the documents reviewed, FRMG understands that the MVEIRB accepts the position of the WLWB that the project is not likely to have a significant adverse impact on the environment or be a cause of public concern and that adverse environmental impacts arising from the project can be adequately addressed in the permitting process. The MVEIRB has not yet released its reasons for decision, which FRMG looks forward to reading. FRMG does not agree with some of the arguments put forward by WLWB and has concerns arising from the legal conclusions drawn by the WLWB and GNWT regarding the application of the Jay measures to the point lake project. FRMG's concerns are largely mitigated, however, by Arctic's IR-responses to the MVEIRB.

FRMG believes it is important to address its concerns with the regulators in this intervention in order to support its recommendation that Arctic's commitments in its IR-response regarding traditional knowledge and cultural impacts become conditions of an approved project. FRMG has additional concerns about cultural and community well-being for the GNWT and WLWB.

FRMGs is concerned that the findings from the Jay Project Report of Environmental Assessment EA 1314-01 (REA) regarding cumulative effects in the project area are not being given adequate weighting in this permitting process. The Jay project was quite clear in identifying significant adverse cumulative effects on caribou and on community



well-being (including cultural and socio-economic well-being of diamond mining communities). Specifically, the REA found that existing impacts on caribou and diamond mining communities was either at or beyond a significance threshold; that any additional project-related impacts would represent unacceptable and significant adverse impacts. These findings supported community input and Traditional Knowledge that caribou and vulnerable peoples cannot sustain additional impacts without serious harm to cultural and community well-being and to the caribou upon which so many people rely. An important aspect of this was the recognition that the health of the caribou, the land, and people are interlinked. The measures put forward by the MVEIRB focused on improving the overall resilience of caribou and diamond mining communities and adaptively managing any new project-related impacts that may arise. These measures were necessary to ensure that any new developments in the area could move forward responsibly.

The over-riding issue identified in the Jay REA was cumulative effects and death by a thousand cuts. Those conditions represent the baseline area within which the Point Lake project is located. Any new developments associated with the Point Lake project ought to also demonstrate that the project will not add to any of the pre-existing and significantly adverse impacts. In the case of the Jay measures, this meant mitigating the pre-existing impacts on caribou and diamond mining communities and ensuring that project-specific impacts were offset. Regulators do not seem to be applying the findings of the Jay REA in their decisions though, which is distressing for FRMG.

For both the GNWT and the WLWB, they have identified a legal opinion that the cancellation of the Jay project by Arctic removes any requirements associated with the REA, e.g., “the Jay-related measures from EA1413-01 are defunct in so far as they relate to work on the Jay Project that was never undertaken” (GNWT IR to MVEIRB, page 2). Neither regulator has identified the need to continue the measures for the Point Lake project.

FRMG contends that this is wrong and an incomplete interpretation of the Jay REA. FRMG agrees that it makes sense to forego mitigation measures that are project-specific. FRMG does not agree that removing mitigation measures to address significant adverse baseline conditions is appropriate. FRMG maintains that impacts to caribou, community and cultural well-being remain significant and must be addressed in the regulatory process.

FRMG Recommendation #3: FRMG recommends the Jay REA measures designed to mitigate impacts associated with cumulative effects be made part of the



conditions for any approved permits in the project area, including those associated with the project under review.

Consideration of cultural integrity

In the case of the WLWB, they have noted in their preliminary screening determination letter to the MVEIRB that “no Parties raised concerns with respect to cumulative effects outside of context of interactions with the Jay Project” and drawn a conclusion that cumulative impacts will not have a significant adverse impact on the environment. This conclusion appears to bypass the finding of the MVEIRB Jay REA that the entire area has pre-existing significant and adverse cumulative effects impacts.

In assessing “cultural integrity and heritage resources, change to or loss of traditional lifestyle; change to loss or loss of heritage resources”, the WLWB has only focused its review on archaeological and heritage assessments. This determination only reflects the inactive use of the area and has not considered the impact on cultural well-being. However, the Jay REA found that cultural well-being was found to have a baseline condition at or beyond a point of significance. As the Point Lake project will continue to occupy the area in space and over time, it will continue to adversely impact the cultural use of the area with an associated loss of traditional lifestyle and cultural integrity. This adds to the impacts Indigenous communities experience in the area as a result of diamond mining. If the Jay REA measures to protect the cultural values in the area are not maintained, then significant adverse impacts are likely to result from the additive effect of existing cumulative and project effects.

FRMG contends that the WLWB cannot support additional cultural impacts to the area without ensuring that the baseline conditions identified in the Jay REA have improved.

FRMG Recommendation #4: FRMG recommends the Jay REA measures designed to mitigate impacts associated with cumulative effects to cultural well-being be made part of the conditions for any approved permits in the project area, including those associated with the project under review.

Alternatively, Arctic and the GNWT must demonstrate that baseline conditions to these valued components have improved since the Jay REA was released prior to any project-related activities occurring.

GNWT programming for cultural and community impacts

The WLWB notes in its preliminary screening determination letter to the MVEIRB, page 36, that “all Jay Measures addressing wildlife impacts have been implemented and



rolled into the WEMP... and that Arctic is bound by this plan which will continue to apply.” The WLWB says it is satisfied that these plans will address caribou-related issues. FRMG believes this to be a prudent and logical approach. FRMG notes that there are no similar considerations or review of the cultural and community well-being Jay Measures.

The Jay REA identified a clear link between the health of caribou, cultural and community well-being. All areas were also found to have significantly adverse baseline conditions. As the Point Lake project will continue to affect diamond mining communities, cultural use of the area, and caribou, it is likely to result in significant adverse impacts to these values if appropriate measures are not in place. The WLWB risks a double standard if Jay Measures addressing cumulative effects for one valued component are considered important mitigation measures for the Point Lake project, but related cumulative effects on other valued components are given no consideration.

In review of the GNWT’s IR response to the MVEIRB, FRMG noted that the GNWT has been actively working on its associated obligations for Measure 8-1: Minimize negative socio-economic impacts of the Project on communities (ongoing). This measure has the intent of understanding diamond mining impacts on communities and adaptively managing them. The measure was made in order to deal with the identified significant adverse impacts associated with diamond mining on affected communities. As part of this review, FRMG reviewed the 2020-2021 Annual Report (based on Measure 13-4). This report identified numerous advances the GNWT has made in this area since 2018. In regards to these works, the GNWT states on page 17 that “Current actions are improving the adaptive management and understanding of social impacts to health and well-being related to mining, however, collaborative work in this area is ongoing and will continue to be needed in the years to come in order to ensure that community well-being issues related to mining are effectively addressed.” This is tremendous progress on adaptively managing diamond mining impacts on the human environment that may be at risk if the Jay Measures are discarded.

The GNWT states in its IR-response to the MVEIRB, page 2, that it will “uphold the Socio-Economic Agreement for the Ekati Mine. However, it was found from the Jay REA that the Socio-Economic Agreement between the GNWT and the proponent had done little to assess diamond mining impacts on communities and manage them appropriately. The Jay Measures targeting the GNWT and proponent on cultural and community issues were put forward to ensure the significant adverse impacts of diamond mining could be identified and lessened. From its 2020-2021 Annual Report, it is clear that the Jay Measures are making a positive difference for some Indigenous



groups. FRMG maintains that these Measures are needed as part of the approval of any further diamond mining impacts in that area and on diamond mining communities. While the WLWB may not have the basis to address socio-economic issues, it can recognize the established interdependence of community and cultural well-being and make the continuance of these measures part of any permitting conditions. Further, FRMG expects the GNWT to work with FRMG to identify and overcome the barriers for FRMG to access positive outcomes from the REA measures.

FRMG Recommendation #5: FRMG recommends the Jay REA measures designed to mitigate impacts associated with cumulative effects to community and cultural well-being be made part of the conditions for any approved permits in the project area, including those associated with the project under review.

Arctic's commitment to carry forward relevant Jay Measures on cultural well-being

Arctic stated in its IR-response to the MVEIRB, page 2, that “Arctic has been clear and consistent in its commitment to carry forward some of these Measures as adapted to the current development (i.e., Point Lake Project in the absence of Jay Project).” FRMG notes that Arctic has listed all relevant mitigation measures for caribou, community and cultural well-being, including reporting and adaptive management requirements. FRMG is pleased that Arctic recognizes the importance of these Measures in responsibly managing impacts associated with their operations.

FRMG Recommendation #6: FRMG recommends Arctic's commitment to carry forward the Jay Measures it has identified to the MVEIRB in its IR-response become a part of the conditions for any approved permits associated with any approved permits associated with the project under review.

The Jay REA recognized that it is not the role of the proponent to manage broader well-being issues on NWT residents that have arisen as a result of the diamond mining industry. Several measures were therefore directed at the GNWT to manage its obligations as the government and in fulfilling the expectations established under various diamond mining Socio-Economic Agreements, including for Ekati. FRMG would like to see a similar commitment from the GNWT to carry forward its obligations associated with the Jay Measures in order to responsibly manage impacts to cultural and community well-being.

FRMG Recommendation #7: FRMG recommends that the GNWT commits to carry forward the Jay REA measures designed to mitigate impacts associated with cumulative effects to community well-being, including the reporting of those



efforts and commit to working with FRMG to improve FRMG engagement and participation in the implementation of Jay REA measures.

Arctic's commitment to adaptive management

With respect to Jay Measure 13-1, Arctic describes its adaptive management commitments under the “Environmental Agreement” as part of its Water Licence. It is not clear if those adaptive management requirements are the same as those set out under the Measure. Adaptive management is often carried out in very different manners. The specific items listed in the measure are deliberate and represent best practices for effective adaptive management. FRMG would like confirmation that Arctic's adaptive management efforts apply these standards.

FRMG Recommendation #8: FRMG recommends that Arctic commits to the conditions of the adaptive management measure Jay 13-1 when undertaking adaptive management actions of mitigation measures or of identified impacts associated with caribou, cultural or community well-being.

Caribou

Caribou is a priority concern for FRMG, The Project is within the core use area of the Bathurst caribou herd range, and specifically, documented movement corridors. The decline of the caribou has a highly significant impact on FRMG traditional activities and FRMG members' Way of Life. The herd has been declining for many years and currently cannot sustain harvest. FRMG seeks to ensure that if approved, appropriate measures will be enacted to prevent further harm to the herd.

GNWT Programming for Cultural and Community Impacts

The WLWB notes in its preliminary screening determination letter to the MVEIRB, page 36, that “all Jay Measures addressing wildlife impacts have been implemented and rolled into the WEMP... and that Arctic is bound by this plan which will continue to apply.” The WLWB says it is satisfied that these plans will address caribou-related issues, noting that some “adaptively modified” aspects of the plans will not be in place until after public review, which isn't planned until October 18, 2023. FRMG is concerned that necessary improvements to the existing plans will not come into effect until that future date and worries that caribou may be impacted by project developments in the interim. FRMG would like to see the discussed improvements incorporated as a Project-specific addendum into the existing WEMP as part of any approvals. FRMG looks



forward to continued discussions with Arctic in the forthcoming December 2021 WEMP/CRMP community workshop.

FRMG Recommendation #9: FRMG recommends that an adaptively modified version of the WEMP based on further public review be developed for Point Lake operations as a condition of the project to proceed.

Fish and Fish Habitat

Potential Downstream Effects

FRMG is concerned about the potential downstream effects caused by the dewatering of a headwater lake in a system of lakes. Currently, there is not enough information to understand the full hydrological effects of dewatering Point Lake or subsequent effects on fish habitat and populations. In the Project Description, Arctic identifies that lake dewatering will cause changes to local hydrology, including “a temporary change in surface hydrology” to Conner and Alexia Lakes and their outflows, but considers them to be minor and does not complete a full assessment of those changes (Project Description, p. 96). However, during the Technical Sessions (September 7-9, 2021), Arctic stated they are currently collecting data to fully evaluate downstream effects and noted that they have not identified any downstream effects of their other lake dewatering activities. Arctic stated that, if required, the watershed could be supplemented with water from Lac du Sauvage, which will require a water licence amendment.

This information suggests that the characterization of potential project effects in the Project Description did not adequately address the downstream effects of lake dewatering activities. Arctic has recognized that they need more data before they can address FRMG’s concerns about the downstream effects of dewatering at Point Lake. Though it is Arctic’s understanding that there is limited surface connection between Point Lake and the downstream lakes, the extent to which these lakes are connected needs to be understood with greater certainty. It is concerning that at this stage in the licensing process, some key hydrological characteristics of the watershed are not known. Without this information, FRMG and other parties are unable to provide informed comments, suggestions, or positions on the plans to dewater and re-water Point Lake. The fact that other lakes at the Ekati mine site have been dewatered “successfully” (Project Description, p. 1) is not relevant as the Point Lake watershed is distinct from other watersheds at the site. Furthermore, Arctic does not define measures



of success when discussing dewatering activities so it is not clear if FRMG would also consider dewatering activities across the mine site to be “successful”.

The uncertainties about downstream effects of dewatering Point Lake extend to the re-watering activities proposed once mining activities cease. While dewatering activities have occurred in other parts of the mine site, Arctic has not yet refilled any pits, which they stated at the Technical Session. It remains to be seen whether re-watering activities will be successful, and as stated above, perspectives on success of these activities may differ between Arctic and FRMG.

Similarly, Arctic is still collecting data on downstream fish habitat to understand what species of fish are utilizing the watershed and how these populations may be affected by project activities. Arctic stated in the Technical Sessions that they have confirmed that Arctic Grayling utilize the Conner outflow. However, they are still collecting data to characterize fish population use throughout the watershed. Arctic stated this data would be available before the end of October, but at the time of this writing, it has not been shared with FRMG. This information is important for understanding the potential effects of dewatering and refilling Point Lake and must be reviewed before any licenses are issued.

FRMG Recommendation #10: FRMG recommends that Arctic complete a fully informed assessment of the potential downstream effects to Conner Lake, Alexia Lake, and their outflows associated with the dewatering and rewatering Point Lake, including anticipated hydrological changes and potential impacts to fish and fish habitat. FRMG should have an opportunity to review and comment on this assessment, including the adequacy of baseline data collection, measures of “success”, and the development of appropriate thresholds.

Fish Removal and Habitat Offsetting

Fish and fishing is critical for supporting FRMG members’ way of life. FRMG has an interest in protecting fish within FRMG traditional use areas and strives to ensure that fish habitat is protected for future generations. FRMG understands that the effects to fish populations and habitat are authorized through the DFO *Fisheries Authorization*, which is developed outside of the water licencing process. Regardless, FRMG would like to take this opportunity to state that the Fisheries Offsetting Plan and Point Lake Fish-Out Plan must be developed in collaboration with FRMG and other Indigenous governments. To date, FRMG has not been engaged in discussions on offsetting



projects or fish-out protocols related to this proposed project.

FRMG Recommendation #11: FRMG recommends that Arctic be required to collaborate with Indigenous governments to develop the Fisheries Offsetting Plan to ensure that habitat offsets are adequate in terms of kind, proximity, condition, and quantity from the perspective of Indigenous people. Arctic should also be required to collaborate with Indigenous governments in the development and implementation of the Fish-Out Plan.

Downstream Monitoring

The Aquatic Effects Monitoring Program (AEMP) should be amended to include effects to the Point Lake watershed downstream of Point Lake. Monitoring should include water quantity and quality as well as effects to fish populations in Conner Lake, Alexia Lake, and their outflows. Arctic states in their Project Description that the AEMP will not be amended to include downstream effects, but that the Surveillance Network Program (SNP) will incorporate these effects (Project Description, p. 77). This suggests that only water quality effects will be monitored. The scope of the AEMP includes monitoring of “physical, chemical, and biological components of the aquatic ecosystem” (Project Description, p. 77). The SNP includes “collection and monthly reporting of information on water quality in minewater management facilities and at discharge locations” (Project Description, p. 78). The downstream physical, chemical and biological effects in relation to mining activities in the Point Lake watershed should be monitored. Monitoring should not be limited to water quality in discharge locations.

FRMG Recommendation #12: FRMG recommends that the Aquatic Effects Monitoring Program be amended to include effects to the Point Lake watershed downstream of Point Lake. Monitoring should include water quantity and quality as well as effects to fish populations in Conner Lake, Alexia Lake, and their outflows.

FRMG Recommendation #13: FRMG recommends that the Aquatic Effects Monitoring Program for Point Lake be amended to include thresholds and triggers developed in collaboration with FRMG. FRMG should have a role in reviewing monitoring results as well as decision-making under any adaptive management frameworks.



Water Management

Overburden characterization and potential for ARD/ML during the life of the mine

Many of the Information Requests resulting from the Technical Session were focused on water seepage quality and the assimilative capacity of King Pond Settlement Facility (KPSF). Arctic has not predicted seepage quality and states several times in the September 17, 2021 Responses to Information Requests Resulting from Ekati Technical Workshop that seepage quality predictions are unnecessary because all seepage water from the Point Lake WRSA will be collected and placed in the King Pond Settlement Facility (Response to IR #12, Response to IR #25, Response to IR #26, Response to IR #29). However, the estimation that the assimilative capacity of the King Pond Settlement Facility will not be reached by adding Point Lake seepage water is not based on a robust analysis. It is based on the assumption that the Point Lake seepage will be of higher quality than the water being pumped into the KPSF from the Misery Pit (Project Description, Appendix D).

As several parties have pointed out at the Technical Session, the metasediment at the Point Lake site is very different from the metasediment and waste rock at other locations on the mine site, including the Misery Pit (IR . Arctic states, “the overall implications of the geochemical assessment for the Project are that there is potential for higher metal leaching rates from Point Lake metasediments” (Water Quality Technical Report, pg. 4).

Despite the geochemical differences, Arctic predicts that Point Lake water will be of higher quality than that of the Misery Pit. This seems to largely be based on the assumption that metasediments from Point Lake are expected to be exposed to the environment for a short amount of time, thereby limiting the amount of oxidation and leaching that could occur.

FRMG is concerned that the theoretical exercise Arctic has engaged in to determine the ability of the water management scheme centered on the KPSF is too uncertain. Arctic is waiting for results of testing that will identify parameters of potential concern likely to be released in acidic drainage. Arctic also has outlined two triggers to initiate additional geochemical characterization tests, based on a comparison of current test results to those of the Jay Project leachate database (Arctic Response to IR#23). Despite this,



there seems to be no prediction of when ARD might occur and no modelling of how seepage quality may change during the life of the operation.

In the October 4, 2021 response to comments, Arctic offers several pieces of information to support their argument that predictive modelling is unnecessary. The first is additional information about the Misery pit sump water quality in comparison to the expected Point Lake WRSA runoff (Arctic response to ENR#3). The second is an explanation of WRSA seepage monitoring, screening, and response programs across the Ekati Mine Site. Arctic has also identified several options for mitigating poorer than expected seepage quality (Response to TG#15). While Arctic's position is that the risk of effects to water quality is low, given operational measures, FRMG would like more concrete data to back up this position.

Recommendation #14: FRMG recommends that Arctic complete predictive water quality modelling to show that the KPSF will not meet assimilative capacity due to inputs from the Point Lake project.

Thermal modelling and expectations for long-term water management

FRMG is concerned that over the long-term, the thermal cover may not provide complete seepage water management functions. In the response to IR#32 In the Responses to Information Requests Resulting from Ekati Technical Workshop, Arctic states that "freezing of the WRSA will progressively retain water within the pile as pore ice and, thereby, reduce seepage out of the WRSA, block internal flowpaths, and isolate acid generating material". This statement suggests that the main method for seepage management will be the natural freezing of the waste rock cover, which in turn, is dependent on climatic conditions. Arctic explains that the Point Lake WRSA cover design is based on the Pigeon cover design, which, according to Version 7.1 of the WROMP was verified as adequate long-term thermal protection with thermal modelling that accounted for a changing climate.

In Arctic's October 4, 2021 response, they indicate that thermal modelling for the Point Lake WRSA is a requirement of the Water Licence Amendment and that this thermal modelling will incorporate the most current data. Schedule 5, Condition 2a in the Water Licence requires that the Waste Rock Storage Area Design Report include "geothermal and short-term stability analyses stamped by a Professional Engineer." FRMG would like this requirement to specifically include thermal modelling using current climate change data.



Recommendation #15: FRMG recommends that the Water Licence amendment require Arctic to complete thermal modelling of the Point Lake WRSA thermal cover based on best available climate change data to date. In the Waste Rock Storage Area Design Report, Arctic should include a predicted date of thermal cover thaw, if available, as well as a discussion regarding expected effects of thermal cover thaw on local water sources, should the modelling prove inaccurate.

Engagement

FRMG Engagement with Arctic Going Forward

FRMG members have practiced their way of life in the Project area for over a 100 years, despite constraints imposed from past resource extraction activities in the area, including Ekati mining projects. For several years, FRMG has lived with the adverse effects of the Ekati Mine, without adequate access to any of the benefits or adequate compensation for the losses endured by our members. A contributing factor is that FRMG does not have any existing Impact Benefit or relationship agreements associated with the Ekati Diamond Mine and therefore does not have any firm commitment from Arctic regarding opportunities to discuss impacts related to any existing or new mining activities, or appropriate mitigation or accommodation measures. FRMG has also not yet had the opportunity to collaborate with Arctic on an appropriate engagement protocol.

FRMG is seeking a commitment from Arctic to meaningful engagement on the Project in order to reduce the risk of environmental effects and associated impacts to FRMG rights and interests, as well as access to benefits. FRMG would like to note its appreciation of the improvements in Arctic's communication regarding the Point Lake Project and is looking forward to continued improvements. FRMG also appreciate Arctic's statement that:

“Arctic’s goal going forward is to strengthen relationships with local Indigenous groups through ongoing community engagement that respect values, beliefs, knowledge and experiences, and that builds on the success of the community environmental engagement programs” (Ekati Diamond Mine Proposed Development of the Point Lake Project: Project Description, p. 69).

As such, FRMG is seeking assurance that Arctic will meaningfully engage with them throughout the lifetime of the proposed project, in a manner and to a degree that meets FRMG's expectations. Also, we would like to assert that only FRMG can directly support and speak for our members' interests and needs. FRMG takes this obligation seriously and



therefore projects within FRMG's territory require full direct engagement and accommodation of FRMG members' constitutionally protected rights.

Recommendation #16: FRMG recommends that Arctic commits to supporting FRMG co-development of an engagement protocol.

Recommendation #17: FRMG recommends that Arctic commit to negotiation of an impact benefit agreement with FRMG in good faith.

FRMG Participation in Project Monitoring

Engagement means more than mere notification, FRMG expects to be directly engaged on all licenses and permit activities, from Project Planning to mine Closure and this includes project monitoring related to the Point Lake Project. Part of this engagement requires free access to FRMG for independent inspections of drawdown, dewatering, and discharge.

Recommendation #18: FRMG recommends that Arctic commit to involving FRMG in all monitoring programs associated with Point Lake Project. FRMG should be provided capacity support and involved in monitoring related activities, including the development of monitoring programs, methods development, sampling, data analysis and interpretation, and GIS analysis, as well as provided all monitoring data and reports for review and comment.

Conclusions

The MVLWB must recognize that FRMG member culture and way of life are closely connected to the health of the land. Any additive impacts to the land, water, and wildlife from the proposed Amendment will in-turn impact FRMG members' S. 35 Aboriginal rights. FRMG recognizes that the size and scale of the Project is less than that proposed for the Jay Project, however, given the extent of cumulative effects caused by the Diamond Industry any change, no matter how small, will impact FRMG. It is FRMG's position that sufficient protections need to be in place to monitor and prevent impacts to water and wildlife in the vicinity of the mine. We consider the Point Lake Project to include a number of uncertainties - data is either not yet available or has been made available without sufficient time for review. The Point Lake area is important to FRMG members and integral to the practice of members' rights. Due to existing cumulative effects, FRMG is concerned that the Point Lake Project will impose



significant impacts on our members' way of life; therefore, we request that the Point Lake Project undergo a full environmental assessment

FRMG makes the following recommendations:

FRMG Recommendation #1: FRMG recommends that Arctic complete the review and on-site assessment of planned activities by recognized traditional- and cultural knowledge holders of affected Indigenous groups, including FRMG, prior to the finalization of the design plans and start of construction activities. As part of this Arctic to commit to supporting the completion of an updated FRMG Traditional Knowledge Study either directly or through existing funding programs.

FRMG Recommendation #2: FRMG recommends that Arctic commit to using and incorporating any Traditional Knowledge provided by FRMG or other Indigenous groups in the assessment of its plans in an appropriate context and in keeping with the intent and terms of its Traditional Knowledge Management Framework and any established Traditional Knowledge Protocols of participating Indigenous Groups.

FRMG Recommendation #3: FRMG recommends the Jay REA measures designed to mitigate impacts associated with cumulative effects be made part of the conditions for any approved permits in the project area, including those associated with the project under review.

FRMG Recommendation #4: FRMG recommends the Jay REA measures designed to mitigate impacts associated with cumulative effects to cultural well-being be made part of the conditions for any approved permits in the project area, including those associated with the project under review.

Alternatively, Arctic and the GNWT must demonstrate that baseline conditions to these valued components have improved since the Jay REA was released prior to any project-related activities occurring.

FRMG Recommendation #5: FRMG recommends the Jay REA measures designed to mitigate impacts associated with cumulative effects to community and cultural well-being be made part of the conditions for any approved permits in the project area, including those associated with the project under review.



FRMG Recommendation #6: FRMG recommends Arctic’s commitment to carry forward the Jay Measures it has identified to the MVEIRB in its IR-response become a part of the conditions for any approved permits associated with any approved permits associated with the project under review.

FRMG Recommendation #7: FRMG recommends that the GNWT commits to carry forward the Jay REA measures designed to mitigate impacts associated with cumulative effects to community well-being, including the reporting of those efforts and commit to working with FRMG to improve FRMG engagement and participation in the implementation of Jay REA measures.

FRMG Recommendation #8: FRMG recommends that Arctic commits to the conditions of the adaptive management measure Jay 13-1 when undertaking adaptive management actions of mitigation measures or of identified impacts associated with caribou, cultural or community well-being.

FRMG Recommendation #9: FRMG recommends that an adaptively modified version of the WEMP based on further public review be developed for Point Lake operations as a condition of the project to proceed.

FRMG Recommendation #10: FRMG recommends that Arctic complete a fully informed assessment of the potential downstream effects to Conner Lake, Alexia Lake, and their outflows associated with the dewatering and rewatering Point Lake, including anticipated hydrological changes and potential impacts to fish and fish habitat. FRMG should have an opportunity to review and comment on this assessment, including the adequacy of baseline data collection, measures of “success”, and the development of appropriate thresholds.

FRMG Recommendation #11: FRMG recommends that Arctic be required to collaborate with Indigenous governments to develop the Fisheries Offsetting Plan to ensure that habitat offsets are adequate in terms of kind, proximity, condition, and quantity from the perspective of Indigenous people. Arctic should also be required to collaborate with Indigenous governments in the development and implementation of the Fish-Out Plan.

FRMG Recommendation #12: FRMG recommends that the Aquatic Effects Monitoring Program be amended to include effects to the Point Lake watershed downstream of Point Lake. Monitoring should include water quantity and quality as well as effects to fish populations in Conner Lake, Alexia Lake, and their outflows.



FRMG Recommendation #13: FRMG recommends that the Aquatic Effects Monitoring Program for Point Lake be amended to include thresholds and triggers developed in collaboration with FRMG. FRMG should have a role in reviewing monitoring results as well as decision-making under any adaptive management frameworks.

Recommendation #14: FRMG recommends that Arctic complete predictive water quality modelling to show that the KPSF will not meet assimilative capacity due to inputs from the Point Lake project.

Recommendation #15: FRMG recommends that the Water Licence amendment require Arctic to complete thermal modelling of the Point Lake WRSA thermal cover based on best available climate change data to date. In the Waste Rock Storage Area Design Report, Arctic should include a predicted date of thermal cover thaw, if available, as well as a discussion regarding expected effects of thermal cover thaw on local water sources, should the modelling prove inaccurate.

Recommendation #16: FRMG recommends that Arctic commits to supporting FRMG co-development of an engagement protocol.

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Recommendation #18: FRMG recommends that Arctic commit to involving FRMG in all monitoring programs associated with Point Lake Project. FRMG should be provided capacity support and involved in monitoring related activities, including the development of monitoring programs, methods development, sampling, data analysis and interpretation, and GIS analysis, as well as provided all monitoring data and reports for review and comment.



References

Arctic Canadian Diamond Company. 2021. IR #5 - Responses to Information Requests Resulting from Ekati Technical Workshop - Point Lake Project – Type A Water Licence Amendment and Type A Land Use Permits Applications (W2020L2-0004, W2021X0004, and W2021D0005).

Arctic Canadian Diamond Company. 2021. Responses to Information Requests Resulting from Ekati Technical Workshop - Point Lake Project – Type A Water Licence Amendment and Type A Land Use Permits Applications (W2020L2-0004, W2021X0004, and W2021D0005).

Arctic Canadian Diamond Company. May 2021. Ekati Diamond Mine Proposed Development of the Point Lake Project: Project Description.

Government of Northwest Territories. 2021. Arctic Canadian Diamond Company Ltd. Type A Water Licence Amendment Application – W2020L2-0001 Type A Land Use Permit Applications – W2021D0005 and W2021X0004 Point Lake Project ENR - GNWT Response to IR#1 and IR#4 ENR – GNWT Comments on IR#54 - Revised Draft Workplan Request for Comment.

Government of Northwest Territories. 2021. Report of Environmental Assessment and Reasons for Decision for Jay Project (EA1314-01) Measure 13-4: 2020-2021 Annual Reporting from Regulatory Authorities.

Mackenzie Valley Environmental Impact Review Board. 2021. Mackenzie Valley Review Board's MVRMA Ss.126(3) Decision – Arctic Canadian Diamond Company Ltd's Point Lake Project.

Tetra Tech. October 19, 2017. Pigeon Waste Rock Storage Area Updated Design Report Revision 1: Ekati Diamond Mine, NT.

Wek'èezhìi Land and Water Board. 2021. Arctic Canadian Diamond Company Ltd. Water License W2012L2-0001.

Wek'èezhìi Land and Water Board. 2021. Point Lake Project– Notice of Preliminary Screening Determination – Applications for Land Use Permits and Water Licence – Mining and Milling – Ekati Diamond Mine, NT.