ARCTIC CANADIAN DIAMOND COMPANY

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CLOSING ARGUMENT FOR THE AMENDMENT APPLICATION

for the

EKATI DIAMOND MINE POINT LAKE PROJECT

(Water Licence W2012L2-0004; Type A Land Use Permit W2021D0005)

February 15, 2022

ARCTIC CANADIAN DIAMOND COMPANY

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LIST OF ABBREVIATIONS

AEMP	Aquatic Effects Monitoring Program
AQMP	Air Quality Monitoring Program
CMMP	Caribou Compensatory Mitigation Plan
CRMP	Caribou Road Mitigation Plan
CRP	Closure and Reclamation Plan
DFO	Fisheries and Oceans Canada
DKFN	Deninu Kue First Nation
EA	Environmental Assessment
ECCC	Environment and Climate Change Canada
ENR	Environment and Natural Resources [for the GNWT]
EQC	Effluent Quality Criteria
FRMG	Fort Resolution Métis Government
GNWT	Government of the Northwest Territories
IBA	Impact Benefit Agreement
ICRP	Interim Closure and Reclamation Plan
IEMA	Independent Environmental Monitoring Agency
KPSF	King Pond Settling Facility
LKDFN	Łutsel K'e Dene First Nation
LUP	Land Use Permit
MVEIRB	Mackenzie Valley Environmental Impact Review Board
MVLWB	Mackenzie Valley Land and Water Board
MVRMA	*Mackenzie Valley Resources Management Act*
NAG	Net-Acid Generation
NPRI	National Pollutant Release Inventory
NSMA	North Slave Métis Alliance
NWT	Northwest Territories
SCP	Spill Contingency Plan
SFE	Shake Flask Extraction
SNP	Surveillance Network Program
TG	Tłı̨chǫ Government
TKEG	Traditional Knowledge Elders Group
TSS	Total Suspended Solids
WEMP	Wildlife Effects Monitoring Plan
WL	Water Licence
WLWB	Wek'èezhìi Land and Water Board
WMMP	Wildlife Management and Monitoring Plan
WMP	Waste Management Plan
WRSA	Waste Rock Storage Area

1. Introduction

On May 31, 2021, Arctic Canadian Diamond Company ("**Arctic**") submitted an application to the WLWB requesting a Water Licence Amendment and Type A LUPs for the purpose of proceeding with a mining project at Point Lake. The Point Lake Project is the future of the Ekati Diamond Mine and the only economically feasible option for preventing closure of the mine in or around 2024. The Point Lake Project ensures that the NWT and its communities will continue to receive the socio-economic benefits of the Ekati Diamond Mine. The Point Lake Project can be developed in a responsible way and with no significant negative residual impacts.

a. Arctic and the Future of the Ekati Diamond Mine

Arctic is a Canadian mining company and one of the world's largest producers and suppliers of premium rough diamond assortments to the global market. Arctic was formed for the purpose of purchasing and continuing operation of the Ekati Diamond Mine. Arctic took ownership of the Ekati Mine approximately one year ago in February 2021 following a court-supervised insolvency process.

Arctic acquired the Ekati Diamond Mine in the belief that there remains a future with many years of productivity at the Ekati Diamond Mine. Arctic is confident that continuing operations at the Ekati Diamond Mine provides diffuse economic benefits to the NWT and its communities. The Ekati Diamond Mine provides employment opportunities for Indigenous peoples and members of neighbouring communities, including through the hiring of local contractors to provide a variety of services at or related to mining. Taxes and royalties from the Ekati Diamond Mine are a significant contributor to the revenue of the NWT. Further, economic benefits are distributed broadly to local Indigenous communities, including through existing IBAs.

In the year that Arctic has owned the Ekati Diamond Mine, and despite the many hardships brought on by COVID-19, Arctic has successfully restarted mining operations at the Ekati Diamond Mine and has progressed towards securing a future for the mine. In that time, Arctic has:

- fully resumed operations at the Ekati Diamond Mine;
- re-hired northern and northern Indigenous employees;
- met with Indigenous Governments and Organizations at a leadership level and initiated engagement processes for the Point Lake Project as well as Ekati Diamond Mine operations;
- carried out successful discussions with the TG under S.23.4.1 of the Tłı̨chǫ Agreement;
- provided royalty and IBA payments;
- established a new and progressive mine development plan that aligns with the current environmental, social and economic climate; and
- developed, engaged on and submitted the Point Lake Project application.

Although Arctic is a new company, the Ekati Diamond Mine is managed by experienced people, many of whom have previously or continuously worked in the

NWT and at the Ekati Diamond Mine. Arctic has committed to continuing agreements that have been in place throughout the history of the Ekati Diamond Mine, including the four IBAs, the Socio-Economic Agreement, and the Environmental Agreement. Arctic is committed to adhering to all laws and authorizations, and to working collaboratively with others to operate the Ekati Diamond Mine in a safe and productive way that effectively manages environmental risks and provides broad-based socio-economic benefits.

Arctic is fully committed to maintaining and advancing the principles and practices of sustainable development, while making best use of the resources mined. This commitment includes respect for the natural and social environments, sharing economic benefits, and diligently reducing adverse effects or outcomes resulting from its work. Arctic's assets maintain a high standard of environmental stewardship throughout all project phases. The Ekati Diamond Mine meets its environmental protection commitments through a comprehensive health, safety and environmental management system.

Arctic believes in the future of the Ekati Diamond Mine. In particular, Arctic sees a promising future in underwater remote mining at existing open pits. This is an environmentally and socially progressive approach that does not require new open pits or waste rock piles. The Point Lake Project will provide time for Arctic to complete its planning and permitting for underwater remote mining in existing open pits. Without the Point Lake Project, there will be another shut down of the Ekati Diamond Mine and it is likely that the mine would close permanently around 2024.

b. The Point Lake Project

The Point Lake kimberlite pipe was discovered in 1991. It was the first diamond bearing kimberlite identified in the Slave Craton of the NWT. The announcement of microdiamonds in the drill core later that year triggered the largest staking rush in North American history.

The Point Lake Project represents the best, indeed only, opportunity for Arctic to build a bridge to underwater remote mining and continued socio-economic benefits from the Ekati Diamond Mine. The Point Lake kimberlite complex (Point Lake, Phoenix and Challenge pipes) is a relatively low-value mineral resource for the Ekati Diamond Mine. However, it is accessible, close to existing infrastructure and can be developed in time to prevent a mine shut down in 2024. For these reasons, Arctic intends to undertake the Point Lake Project on an unusually low-margin as an investment in the future of the Ekati Diamond Mine. Arctic cannot develop the Point Lake Project at a financial loss and, therefore, there are financial limitations on what the project can accommodate.

Arctic has proposed the construction and operation of a satellite open pit at Point Lake in close proximity to the existing Misery site at the Ekati Diamond Mine. As set out in Arctic's public hearing presentation (Link), and in its initial Application materials, mining of the Point Lake open pit represents an extension of past and current Misery operations requiring little new infrastructure and presenting no materially new environmental risks that cannot be mitigated. This close proximity to existing mine

infrastructure is one of the Point Lake Project's primary environmental and economic benefits.

The new infrastructure and construction required for the Point Lake Project are relatively minor. They include the following:

- construction of a <1km long access road to the Point Lake site;
- construction of a small utility pad of approximately 2 hectares adjacent to the Point Lake open pit;
- fish removal and dewatering of Point Lake;
- construction of dewatering pipelines principally along existing roads;
- excavation of the Point Lake open pit;
- construction of the Point Lake Waste Rock Storage Area and Overburden Stockpile;
- transfer of Point Lake Project mine water to the KPSF; and
- possible diversion of water to Connor Lake for the purpose of maintaining fish habitat, if required.

Mining of the Point Lake kimberlite pipe will involve the use of a number of existing components of the Ekati Diamond Mine, including:

- Misery Camp, Ekati Main Camp, and associated infrastructure;
- roads, power and transportation infrastructure;
- mine water management infrastructure;
- process plant and processed kimberlite containment areas; and
- open pit mining and support equipment and maintenance infrastructure.

The Point Lake Project will require a project-specific authorization from DFO. This authorization has been requested and is undergoing review. The Point Lake Project is also affected by a variety of other regulatory or statutory regimes which may set out environmental criteria for development of the Point Lake Project, including the *Mackenzie Valley Resource Management Act*, *Northwest Territories Lands Act*, and the *Wildlife Act*, among others.

In its comments on the draft LUP, WLWB staff asked for clarification on what is included in "associated and supporting activities". This language is appropriate for the WLWB to include in the LUP. For context, Part A of the LUP provides a "Scope of the Permit" and enumerates a list of 14 activities that Arctic is entitled to conduct for land use operations. Among these are construction of the Point Lake access road, establishment of dewatering infrastructure, and closure and reclamation of project components. The final condition, Part A (1(n)), entitles Arctic to conduct "associated and supporting activities." The language "associated and supporting activities" is clearly linked to the preceding listing of 13 primary activities (i.e., Condition 1 Parts (a) through (m)) and is, in Arctic's view, specific and restricted to those operating activities that are necessary to carry out the listed primary activities. This phrase is reasonable for inclusion in the scope of the Point Lake Project. It is not possible to describe in detail every minutiae of the activity occurring at Point Lake. In fact, overly prescriptive scoping statements unnecessarily restrict on-the-ground operating activities in unforeseen ways that may prevent Arctic from conducting reasonable and necessary

work within the approved project description. The ENR Inspector can be relied on to appropriately enforce the scope of a LUP, in Arctic's view.

The purpose of this Licence Amendment Application is to permit Arctic to proceed with the Point Lake Project. While Interveners have, at times, sought inclusion of conditions to the Water Licence that are not related to the Point Lake Project or which are proposed to be applied generally across the entirety of the Ekati Diamond Mine, these recommendations are out of scope of this application. As such it would be procedurally unfair if this application results in conditions that are not related to the Point Lake Project.

Several Interveners have proposed amending existing conditions in the Water Licence that are not necessary for the Point Lake Project. Arctic is concerned that such amendments may cause the WLWB to depart from its duty of procedural fairness. The Water Licence(s) for the Ekati Diamond Mine have evolved over the past 25 years to provide an integrated comprehensive regulatory tool within which changes that may appear minor on a cursory review could have substantive cascading effects, implications for preserving previous WLWB intent, and impede Arctic's ability to remain in compliance (because environmental management systems and procedures are designed to achieve compliance with current and known licence conditions). Changes to licence conditions that are not directly necessary for inclusion of the Point Lake Project must be fully evaluated for unintended negative ramifications and are beyond the scope of this proceeding. Where the WLWB is going to amend a licence condition, it is obligated to provide the licensee with notice of the potential amendment and a fair chance to present evidence on the amendment. If Arctic lacks a proper opportunity to call evidence, particularly when out-of-scope recommendations are made late in the process, there is a risk of prejudice if such terms are added to the licence.

Accordingly, the WLWB should grant the amended Water Licence and Type A LUP allowing the Point Lake Project to proceed.

c. The Process Before the WLWB

Arctic currently holds eleven Type A LUPs issued under the *Mackenzie Valley Resource Management Act* which cover mining development activities associated with the Ekati Diamond Mine. These permits are in good standing. One additional Type A LUP is required to enable project activities at the Point Lake site. An Early Works LUP was issued in October 2021 that enables construction of the short access road and installation of dewatering infrastructure (Link). A Mining LUP will address mining and reclamation activities. A Type A Water Licence Amendment will allow Arctic to carry out dewatering, pit development, and associated activities at Point Lake.

On May 31, 2021, Arctic submitted its application for this amended Water Licence and LUP. On June 2, 2021, the Arctic submitted additional information, and on June 10, 2021, the application package was deemed complete. On June 10, 2021, the WLWB determined that there were clear linkages between the LUP applications and the Point Lake Project underwent a preliminary screening.

On August 24, 2021, the WLWB released its preliminary screening determination (Link), in which it determined that the Point Lake Project will not have significant adverse impacts on the environment or be a cause of public concern. On that basis, the WLWB decided not to refer the Point Lake Project to an EA.

The WLWB facilitated a technical session with Arctic and certain other interested parties from September 7-9, 2021 (see Arctic's presentation: Link). On September 17, 2021 Arctic provided responses to information requests from the Technical Session (Link). On October 18, 2021, the MVEIRB decided not to exercise its discretion under subsection 126(3) of the MVRMA and order an EA of the Point Lake Project (Link).

A public hearing was carried out before the WLWB from November 23-26, 2021. Arctic responded to undertakings from the public hearing by December 3, 2021, including the delivery of version 2.1 of the Point Lake Dewatering Plan which addressed in response to comments made at the public hearing (Link). On December 6, 2021, the WLWB circulated Dewatering Plan version 2.1 for public review (Link). On December 14, 2021, the WLWB circulated a draft Water Licence Amendment and draft LUP for public review. On January 11 and 13, 2022, respectively, reviewers provided their comments on Dewatering Plan version 2.1 and the draft amended Water Licence and LUP (Link). On January 20 and 25, 2022, respectively, Arctic provided its comments and its responses to reviewer comments on the Dewatering Plan version 2.1 (including delivery of version 2.2 of the Dewatering Plan that addresses review comments) and the draft amended Water Licence and LUP (Link).

Arctic has submitted a number of plans and reports to the WLWB and will be submitting others in the future. Key evidence and documents submitted, or otherwise collected by the WLWB through this amendment application, include the following:

- The application for amendment of Water Licence W2020L2-0004 filed on May 31, 2021 (Link); and
- Early Works permit application dated May 31, 2021 (Link);
- LUP application dated May 31, 2021 (Link);

- Point Lake Project Description dated May 31, 2021 (Link);
- Additional information provided by Arctic to the WLWB by email on June 2, 2021 in response to information requests made by the WLWB;
- Arctic's letter to the WLWB dated July 29, 2021 (see p. 101: Link);
- The August 24, 2021 preliminary screening decision of the WLWB (Link);
- Arctic's presentation at the September 7-9, 2021 Technical Session (Link);
- Arctic's primary responses to Information Requests from the Technical Session dated September 17, 2021 (Link);
- The September 24, 2021 letter from Arctic to the MVRB (Link)
- The October 18, 2021, letter from the MVRB to the WLWB deciding not to order an EA (Link)
- The ERM Memorandum "Point Lake Project SFE Leachate and NAG Leachate" October 19, 2021 (Link);
- Arctic response to interventions dated November 12, 2021 (Link);
- Arctic's public hearing presentation dated November 17, 2021 (Link);
- Public hearing transcripts for November 23, 2021 (Link);
- Public hearing transcripts for November 24, 2021 (Link);
- Public hearing transcripts for November 25, 2021 (Link);
- Public hearing transcripts for November 26, 2021 (Link);
- The Undertaking responses provided by Arctic by way of letter dated December 2, 2021 (Link);
- The December 15, 2021 letter from the MVRB to the Assistant Deputy Minister of Northern Affairs Canada regarding outstanding procedural issues following the MVRB's ss. 126(3) determination not to order an EA (Link);
- Arctic's comments on the Dewatering Plan version 2.1 dated January 20, 2022 and delivery of Dewatering Plan version 2.2 for approval (Link); and
- Arctic's comments on the draft amended Water Licence and LUP dated January 25, 2022 (Link).

d. Organization of this Closing Argument

This Closing Argument is organized to address areas that are important to the Water Licence amendment and LUP application, particularly issues over which there has been commentary by Interveners and other engagement partners. In this document Arctic intends to provide an overview of these issues and will refer to documents previously submitted to the WLWB, including hearing transcripts, Intervener submissions and reviewer comments on the draft licence along with Arctic's accompanying responses.

This Closing Argument addresses the following issues:

- engagement;
- caribou and wildlife;
- dewatering;
- road construction and modification;

- waste rock and overburden storage;
- Jay Project Conditions and Jay Project EA Measures; and
- closure and reclamation.

Arctic has reviewed the Intervener Closing Arguments that were submitted in advance of this Closing Argument. Arctic's responses to issues raised by each Intervener are set out throughout.

Arctic would like to thank the WLWB, its staff, and all of the Interveners in the Ekati Diamond Mine Water Licence Amendment and LUP process for their efforts to review and provide recommendations to improve the Project. Arctic looks forward to continuing its engagement with Elders, communities, regulatory agencies, and WLWB staff, as Arctic moves forward with operations at Ekati Diamond Mine.

2. Engagement

The draft amended Water Licence and LUP provide for the continued incorporation of Traditional Knowledge at a variety of stages. In particular, Arctic notes the Traditional Knowledge Management Framework in Part B, Condition 17 as well as general conditions 15 and 16 of the Water Licence and Conditions 82 and 83 of the LUP.

Arctic officials have reached out and engaged with interested parties to discuss the Point Lake Project and Arctic's approach to building a sustained future for the Ekati Diamond Mine. While there are many areas of dialogue, Arctic has received generally positive feedback on its longer-term strategy and on the importance of the Point Lake Project to ensuring ongoing economic benefits. Arctic's engagement will continue after this amendment application process has concluded, and throughout the life of the Ekati Diamond Mine.

Two topics that were consistently raised for discussion through Arctic's engagement were potential cumulative barrier effects to caribou and the incorporation of Traditional Knowledge into the Point Lake Project. The incorporation of Traditional Knowledge is discussed below. The effects of the Point Lake Project on caribou, and Arctic's plans to mitigate those potential effects are discussed in further detail in section 3.

a. Traditional Knowledge

Arctic has carried out a variety of processes to ensure engagement with Indigenous peoples as well as local communities and other stakeholders. The Traditional Knowledge applied to the Point Lake Project is supported by decades of work to obtain and incorporate Traditional Knowledge in the area of the Ekati Diamond Mine.

Point Lake is close to areas that have been previously studied and developed such as the Misery Camp area, the Lac du Sauvage Road (previously Jay Road), and the now cancelled Jay Project. Arctic described the available Traditional Knowledge and how it has been applied to the Project Design in the Project Description Report that was part of the Point Lake Project application package submitted to the WLWB in May 2021 (Link). In fact, because the Point Lake kimberlite was the first kimberlite pipe identified in the NWT, the first archaeological and Traditional Knowledge studies conducted for the Ekati Diamond Mine in the mid-1990s included the Point Lake area. Among other things, these studies identified that the area west of Lac du Sauvage is a historic caribou movement corridor accompanied by numerous Indigenous heritage resources, and the importance to traditional land use of water quality and fish in smaller lakes as well as the larger lakes (i.e., Lac de Gras and Lac du Sauvage).

Detailed Traditional Knowledge that is relevant to and has been applied to the Point Lake Project includes the following:

- The environmental assessment of the now cancelled Jay Project in 2015 included community and Elder site visits and a Traditional Knowledge Report on traditional use of Lac du Sauvage and shoreline areas by the Yellowknives Dené First Nation.

- The environmental assessment of the now cancelled Jay Project in 2015 resulted in the development of a retrospective detailed mapping of caribou trails that combined Traditional Knowledge and scientific evidence over a broad area that included Point Lake.

- Archaeological studies conducted for the Jay Road (now the Lac du Sauvage Road) in 2015 provide additional information for the adjacent Point Lake area. All archaeological studies were conducted by a licenced archaeologist accompanied by Traditional Knowledge holders.

- The current design of caribou crossings of mine roads was developed using field-based Traditional Knowledge.

- Field-based Traditional Knowledge regarding caribou behavior, particularly relating to mine roads, has been collected on many occasions throughout the past 20 years of operations at the Ekati Diamond Mine. The sharing of this knowledge has contributed to improvement and evolution of the caribou monitoring and protection programs that will be used for the Point Lake Project.

- The Traditional Knowledge Elders Group (TKEG) was formed as a result of the Jay Project EA and has provided insight and recommendations on various topics that are relevant to the Point Lake area, including caribou movement.

- Caribou monitoring programs that are documented in the WEMP have been developed with contributions from Traditional Knowledge and provide information about current caribou movement through the area that has been applied to the Point Lake Project design.

- The CRMP was developed as a result of the Jay Project EA and applies to roads at the Ekati Diamond Mine. The CRMP provides protection to caribou that come near or onto a mine road and combines Traditional Knowledge with scientific evidence.

The available Traditional Knowledge indicates that the Point Lake Project is within the historic caribou movement corridor on the west side of Lac du Sauvage and that risks to caribou movement, water quality and fish are of primary concern in the Point Lake area. As a result, the Point Lake Project design mitigates potential effects to caribou movement through design mitigations; to water quality by providing for mine water and seepage collection and transfer to KPSF; and to fish by avoiding unnecessary permanent impacts and through a fisheries offsetting plan approved by the DFO.

During the period of the WLWB's review, additional Traditional Knowledge has been shared with Arctic focused on caribou movement. This led to the WRSA conceptual design variations described in its Public Hearing Presentation (see slide 25: Link). Processes for engagement are ongoing. Arctic intends to continue its engagement, including soliciting and applying Traditional Knowledge on caribou movement to inform implementation and closure of the Point Lake Project.

In fact, coinciding with the delivery of this Closing Argument, Arctic is conducting a workshop involving different Indigenous groups to assist in finalizing the WEMP Point Lake Addendum and placement of the WRSA on February 15 and 16, 2022.

Additionally, as discussed in section 7 below, Arctic has committed to implementing some of the measures resulting from the EA of the cancelled Jay Project (Link). Many of the measures related to caribou and caribou movement involve Traditional Knowledge. Arctic illustrated its planned approach to implementing these measures at the WLWB Technical Workshop on the Point Lake Project in September 2021 (see slides 16-17: Link).

b. Project Improvements Resulting from Engagement

Arctic has incorporated engagement feedback into the Point Lake Project in a number of ways. Arctic's May 2021 Licence amendment and LUP applications to the WLWB incorporated feedback resulting from Arctic's pre-submission engagement. Additional changes have been made to the Project as a result of engagement following Arctic's initial submission. These changes are improvements to environmental protection and mitigation measures.

As a result of engagement, changes were made to the dewatering plan to identify the outflow location of the dewatering pipelines into Lac du Sauvage. Changes were made to the monitoring of outflow into Lac du Sauvage. Changes were also made to the threshold of TSS at which outflow of Point Lake water to Lac du Sauvage (dewatering stage 1) will cease and instead outflow will be pumped to the KPSF and Lynx open pit (dewatering stage 2).

Engagement resulted in changes to geochemical testing and mine water quality modelling. SFE and NAG leachate tests were conducted in response to engagement feedback, resulting in the initiation in December 2021 of humidity cell testing of Point Lake metasediment. Additionally, WRSA seepage quality prediction and KPSF water quality evaluation are planned that will utilize the additional new geochemical test data. These new activities are direct results of engagement feedback.

Engagement has resulted in plans to physically modify the Lac du Sauvage Road to further facilitate caribou movement while retaining the smaller road needed for post-closure pit flooding from Lac du Sauvage. These road modifications will be provided to the WLWB for approval under the Road Construction Plan that is a requirement of the draft LUP.

As part of ongoing engagement, WRSA design variations at the Point Lake site continue to be evaluated and considered. It is clear that the location of the WRSA is an important issue to Arctic's engagement partners and the Interveners in this application. Arctic is hosting a wildlife workshop on February 15 and 16, 2022 with IGO's that will include specific discussion on the final WRSA design. Arctic believes that its original WRSA design, on which the Board's Preliminary Screening was based, remains a valid approach; nonetheless, Arctic remains open to engagement feedback that may identify feasible design variations that further reduce risk to caribou. Arctic

will provide the final WRSA design to the WLWB for approval in the WRSA Design Report that is a standing requirement of the Water Licence.

Arctic requests that the amended Water Licence and LUP provide flexibility for Arctic to continue engagement where feasible. Overly restrictive or specific conditions are not always beneficial to the best outcomes. Arctic believes that Part B, Conditions 15-17 of the draft amended Water Licence, will provide robust avenues for Traditional Knowledge to be incorporated into the Point Lake Project.

3. Caribou and Wildlife Habitat

Risks to caribou, most specifically risks to caribou movement, were identified internally by Arctic as a primary environmental concern at the outset of Point Lake Project planning based on previous assessments and the extensive 25-year history of monitoring, Traditional Knowledge and scientific evidence at the Ekati Diamond Mine. Based on this knowledge, Arctic incorporated caribou protection measures directly into the design of the Point Lake Project.

a. Existing Regulatory Protections

The Licence amendment process for the Point Lake Project takes place in a regulatory environment that already has a variety of processes through which wildlife effects are monitored and mitigated. Principally, the GNWT-ENR regulates various aspects of wildlife monitoring and engagement through the *Wildlife Act*, which requires an approved WMMP.

The WEMP and CRMP for the Ekati Diamond Mine were approved by the GNWT in 2021 as satisfying the requirements of a WMMP for the Ekati Diamond Mine. This provides an approved WMMP that applies immediately to the Point Lake Project. In its approval, the GNWT required that the WEMP and CRMP undergo public review and update in concert with the 2023 Water Licence Renewal process. This will provide an updated and re-approved WMMP that will apply throughout the Point Lake Project. Immediate short-term (i.e., pre-October 2023) Point Lake Project-specific wildlife monitoring and management activities that are in addition to those activities already conducted through the WEMP and CRMP will be implemented through a Project-specific Addendum to the WEMP. This provides a vehicle to ensure that the necessary Project-specific activities are implemented throughout public review and update of the WEMP for 2023. Arctic circulated a draft Point Lake WEMP Addendum in December 2021 and is hosting a wildlife-focussed workshop with IGOs and ENR on February 15 and 16, 2022 at which finalization of the Point Lake WEMP Addendum will be specifically discussed. Arctic intends that the Point Lake WEMP Addendum (along with the approved WEMP and CRMP) is in effect for the summer 2022 dewatering program and until ENR approval of the 2023 WEMP update (which will incorporate the Point Lake WEMP Addendum as reviewed and updated).

The CRMP provides for a variety of protective measures for caribou. These include: the provision of ramps to facilitate caribou passage, including integration of Traditional Knowledge in crossing design; limiting snow berms along roads; speed limits on roads; daily road surveys with site-wide notifications when caribou are near the Ekati Diamond Mine and road closures to allow caribou to pass with no “herding”; stockpiling ore to facilitate production during road closures; radio-collaring of caribou and use of wildlife cameras to capture caribou movement and assess the effectiveness of mitigation strategies.

The WEMP provides an adaptive management framework to guide additional mitigation actions and monitoring to address any new potential barrier effects. It also has a number of protective measures for caribou. The wildlife monitoring in the WEMP

uses scientific methods and is informed by Traditional Knowledge regarding local wildlife and ecology. The WEMP focuses on wildlife species and habitats identified as being of social or economic importance, or of particular ecological or conservation concern. Each year the program is refined as a result of previous information collected and input from government and non-government agencies, Indigenous communities, and IEMA. Traditional Knowledge has been used to help understand monitoring results and provide ways of preventing or reducing impacts to wildlife.

Arctic will operate the Point Lake Project according to the WEMP and CRMP as they have been approved by the GNWT, including the Point Lake WEMP Addendum. The Point Lake WEMP Addendum is, among other things, planned to address caribou crossings for the temporary dewatering pipeline.

Intervenors have made recommendations for site-wide conditions for the entire Ekati Diamond Mine related to caribou research and monitoring, the WEMP, and CRMP. These recommendations are out of scope of this amendment application and are already set to be addressed through other regulatory regimes. The WEMP and CRMP are required by the GNWT to undergo a review and update completed by October 2023. This work will include research utilizing caribou collar tracking and zone of influence investigations as carried forward through the Jay Project EA measures.

Arctic notes that there is potential for regulatory overlap between the GNWT and WLWB over the wildlife effects of the Point Lake Project. This is clear in the nature of some Intervener comments that recommend WLWB approval of the WEMP and CRMP (or aspects thereof) that have already been approved by GNWT under the *Wildlife Act*. Duplication of effort on regulatory requirements can cause serious disruptions to mining operations and interference with regulatory aims because it creates obstacles to alterations or improvements. It also requires more resources from reviewers and IGOs involved in these processes. More broadly, such duplication is not in the public interest and can cause very real barriers to responsible environmental protection and economic development in the NWT.

Arctic agrees with the statements in the Closing Argument of the GNWT that:

> Acknowledging a comment made on the draft LUP recommending a Board-approved WEMP and CRMP in Condition 37, the GNWT does not support this recommendation. To further ENR staff comments made during the Public Hearing, the GNWT does not support Board approval of these plans, as they are already approved as the WMMP for the Ekati mine under Section 95 of the Wildlife Act. Board approval of these plans is not ideal or necessary as a WMMP required under Section 95 of the Wildlife Act is more comprehensive given that the WLWB cannot impose requirements related to wildlife that are unrelated to wildlife habitat. Further, having two approved versions of the same plan does not support the coordinated and integrated approach aspired to in the MVRMA (pp. 9-10).

Arctic believes that the draft Water Licence Amendment and LUP existing adequately address wildlife (especially caribou) and habitat concerns that are not already

addressed through the GNWT-approved WMMP and Point Lake WEMP Addendum in progress, including:

- a requirement in Schedule 5, Condition 2(b)(xii) that the Waste Rock Storage Area Design Report contain a description of how the WRSA design reduces impact to caribou habitat;
- a requirement in Schedule 5, Condition 3(b) that the Waste Rock Storage Area Cover Design include a surface material description for Ekwò (caribou) and wildlife; and
- the requirements in Conditions 37-39 of the draft LUP.

b. Room for Adaptive Management

Major components of the wildlife mitigation measures in the WEMP, CRMP and elsewhere are a product of adaptive management and community engagement. It is important that the WLWB not impose rigid conditions in the Water Licence or LUP that foreclose changes arising from new information, new objectives and new perspectives.

Caribou will be protected through a number of design elements and established field-based protection measures that incorporate adaptative management through processes such as the receipt and incorporation of Traditional Knowledge, such as the following:

- The WEMP and CRMP which are periodically updated;
- Construction of the Lac du Sauvage road (which has already been constructed), which included field-based Traditional Knowledge preceding construction that assisted with optimizing the configuration of the road crossing of the local esker;
- Alternative locations for the WRSA, which were put forward and evaluated for the purpose of selecting a location that is minimally disruptive to caribou movement corridors;
- The specific configuration of the WRSA at Point Lake will continue to be reviewed and optimized; and
- Caribou crossings along the Lac du Sauvage road will be reviewed and improved using field-based Traditional Knowledge.

Intervenors have provided recommendations that Arctic investigate WRSA designs (further discussed in section 6 below) that further reduce potential barrier effects to caribou movement. In response, Arctic developed a series of conceptual design variations that are considered achievable. Arctic plans to continue engagement leading to a WRSA Design Report which will be submitted for WLWB approval following issuance of the Water Licence Amendment.

4. Dewatering

Dewatering of Point Lake will be completed in a manner consistent with previous lake dewatering programs at the Ekati Diamond Mine and as approved by the WLWB. In order for the Point Lake Project to proceed it is essential that dewatering is completed during the open-water season in 2022. Dewatering is scheduled to be complete by September 30, 2022. Arctic believes that approval of the submitted Point Lake Dewatering Plan under Part E, Condition 1 of the Water Licence ensures that dewatering will proceed in a responsible way. The specifics of the dewatering process are set out in the Dewatering Plan.

Some Intervenors have suggested that the Point Lake Dewatering Plan that Arctic has provided and revised through the Project engagement processes undergo further public review following issuance of the Water Licence Amendment. As set out in Arctic's responses to Intervener comments (page 38: Link), Arctic has provided a Point Lake Dewatering Plan that has undergone public review through this proceeding, with no substantive water quality concerns identified. The most recent version was Version 2.2 and submitted to the WLWB on January 13, 2022. Arctic has strongly requested that the WLWB approve the Plan as part of its issuance of the Water Licence Amendment rather than as a subsequent process.

A separate, later process to approve the Dewatering Plan would result in a delay which could prevent the Point Lake Project from proceeding. Further public review after issuance (and Minister authorization) of the Water Licence would require at three to four months which would negate Arctic's ability to conduct dewatering in 2022 and put the Point Lake Project at jeopardy of cancellation for the reasons previously documented in Arctic's letter to the WLWB dated July 29, 2021 (See p. 101: Link). From Arctic's perspective, all of the relevant parties and issues have been canvassed over the course of the extensive WLWB process. As such, there is no compelling rationale for resubmission of the Dewatering Plan for further review.

Some Interveners have commented that the Dewatering plan should include details relating to locations, intervals and other characteristics of caribou crossings along the proposed dewatering pipelines (See IEMA Comment 2: Link). As set out in Arctic's response, Arctic recommends that these details be left to be addressed in the WEMP addendum so that the designs are considered in a timely manner in the full context of wildlife, specifically caribou, discussions. Arctic is hosting a wildlife workshop with IGO's on February 15 and 16, 2022 at which caribou crossings over the Dewatering pipelines will be specifically discussed.

Dewatering will coincide with a fish-out. A Point Lake Fish-out Plan is under development and will be submitted to DFO for approval prior to implementation. It is anticipated that the fish-out program will require and include hired assistance from experienced fishers from northern communities as has been the case for previous fish-out programs at the Ekati Diamond Mine. The fish-out program will be conducted and reported according to DFO authorization.

As set out in Arctic's response to the Intervention submissions of the DFO (see page 19: Link), the draft Dewatering Plan addresses the potential need for directing a minor

quantity (approximately 3%) of dewatering outflow to Connor Lake, if required, through the Point Lake Project *Fisheries Act* Authorization. The dewatering outflow introduced to Connor Lake would be within natural lake levels and flow experience in the Connor Lake outflow. Arctic is aware that an on-going need for flow augmentation, if necessary under DFO direction, would require a WLWB-authorized water use and Arctic would take the necessary steps to have such water use authorized.

5. Road Construction and Modification

The Point Lake Project requires limited new road construction for access to the Point Lake pit from the existing Lac du Sauvage Road. The access road has been constructed (nearly complete at this time) according to design under LUP W2021X0004 issued in October 2021.

Arctic has no significant objections to Conditions 38 and 39 of the draft LUP, which provide for a Road Construction Plan to describe the planned physical modifications to the existing Lac du Sauvage Road to further facilitate caribou movement. Arctic suggests the Plan should be titled "Road Modification Plan" and due 60 days prior to WRSA construction.

Other than as set out in conditions 38 and 39 of the draft LUP, the Water Licence and LUP should not prescribe the nature and extent of modifications to the Lac du Sauvage Road as recommended by TG (TG Licence Comment #5: Link). Section 38 of the draft LUP requires that a Road Construction Plan (which should be called a "Road Modification Plan") be provided for WLWB approval, which allows Arctic time to continue engagement and develop engineering designs. It is important that the LUP maintain flexibility rather than prescribe strict criteria for caribou-related modifications to the Lac du Sauvage road.

Certain Interveners have recommended that changes be made to the Misery Road to allow for caribou movement (TG Licence Comment #7: Link). These recommendations are out of scope for this proceeding, in Arctic's view. Arctic is not seeking any changes to the Misery Road as part of this amendment application. It would therefore be procedurally unfair for the WLWB to impose any conditions related to it. The potential operating effects of the Misery Road on caribou movement are not established and are a current topic of discussion for the WEMP. Continued analysis of caribou collar data and other data is being initiated to inform the 2023 review and update of the WEMP, and this will include the Misery Road. Arctic notes and agrees with the comments provided by the GNWT in this regard in its Closing Argument, as follows:

> "… the GNWT would like to clarify its understanding that ENR does have the authority to require changes to the road structures under the Caribou Road Mitigation Plan (CRMP) which is part of the Minister-approved Wildlife Management and Monitoring Plan (WMMP) for the Ekati Mine. As such, the GNWT suggests that further, more comprehensive discussion of the available data and evidence would be useful in informing what types of revisions to the CRMP are necessary, including potential structural changes. For example, in the case of Misery Road, parties should consider together how much of the caribou avoidance seen in the Independent Environmental Monitoring Agency's animation is likely influenced by road structure factors versus traffic factors or overall mine disturbance." (p. 9)

6. Aquatic Receiving Environment

Arctic notes a new recommendation in GNWT's Closing Argument that the amended Water Licence should change the definition of "Receiving Environment" in Part 2 of the Water Licence to remove reference to the natural "aquatic" environment. Arctic has several concerns with this recommendation.

First, as acknowledged by GNWT, this is a recommendation made for the first time in closing arguments. It was not addressed in GNWT's intervention materials, during the public hearing nor in the GNWT's comments on the draft Water Licence. It is procedurally unfair to consider such a change at this late stage when no further evidence can be tendered.

Second, this is not a change specific to the Point Lake Project and is therefore out of scope of this amendment process. Such a significant change should not be shoe-horned into the Water Licence amendment processes. Rather, it may be included as part of a review and renewal of the Water Licence.

Third, this change has potentially sweeping effects on a number of Licence conditions which refer to the Receiving Environment. There are many potential differences between mitigation measures designed to address aquatic environments and alternatives, such as terrestrial environments. The water licence framework has been developed with reference to the "aquatic" receiving environment. The removal of "aquatic" as a reference point for other conditions in the licence will require a careful examination of the implications for these changes. This examination was not done as part of this amendment application.

7. Waste Rock and Overburden Storage

a. Location

Part F, Condition 3 (along with Schedule 5, Conditions 2 and 3) of the draft amended Water Licence require that Arctic submit a WRSA Design Report in accordance with the Waste Rock and Ore Storage Management Plan that is required under Part H, Condition 3. Part F, Condition 4 (along with Schedule 5) of the draft amended Water Licence calls for Arctic to submit a Waste Rock Cover Design Report. These requirements appropriately and sufficiently address the relevant issues regarding the location, design and construction of the WRSA. Further prescriptions are unnecessary and would be inappropriate in Arctic's view. Subject to the comments below and Arctic's comments on the draft amended Water Licence and LUP, the WLWB should issue the amended Water Licence and LUP and permit Arctic to proceed with the Point Lake Project.

Arctic intends to submit a Point Lake WRSA Design Report for approval following issuance of the Water Licence Amendment. Arctic will commence construction of the WRSA once approval has been received, which is anticipated for fall 2022 following the completion of dewatering. Arctic has committed that the Point Lake WRSA Design Report will include design of the overburden stockpile and the WRSA seepage collection system.

Unless the WRSA and overburden stockpile are placed in an economically viable area, the Point Lake Project cannot proceed. It is important that conditions are not imposed in the Water Licence and LUP that bind Arctic to criteria that cannot be achieved, or are not economically feasible. Arctic disagrees with the characterization in IEMA's Closing Argument that this determination was made in a manner that is opaque. Rather, it is the result of an evaluation that was undertaken for the WRSA and was described in the Project Description Report (Link). The economic analysis concluded that waste rock and overburden placement must be proximate to Point Lake and cannot be transported to existing waste rock storage sites further away such as the Misery WRSA. Arctic provided financial information supporting this operating constraint in its July 29, 2021 letter to the WLWB (see pages 108-109: Link).

The level of engagement that Arctic has carried out on the WRSA is exceptional for a major operational component of a mine. It is important that the amended Water Licence and LUP provide Arctic with flexibility to carry out fulsome engagement and engineering design.

Arctic is hosting a wildlife-focussed workshop with IGO's on February 15 and 16, 2022 at which final WRSA design will be a specific topic of discussion. Arctic anticipates submitting the WRSA Design Report for approval in July 2022. Arctic believes this will be sufficient time for WLWB review, enabling Arctic to achieve the needed development schedule, that requires construction of the WRSA basal layer of construction rock to commence in fall 2022.

b. Design Options

In its May 2021 Point Lake Project applications to the WLWB, Arctic provided a design for the WRSA that Arctic found to be achievable and to not pose a significant negative impact on caribou. This was the project design for the WLWB's Preliminary Screening of the Project. As set out in its Public Hearing presentation, in response to engagement feedback, Arctic developed four conceptual design variations (see slide 25: Link) that are considered achievable and that are deemed to provide the same or better mitigation of risks to caribou as the preliminary design. All of the conceptual design variations will be more costly for Arctic to construct, monitor, and close compared to the original design. All of the conceptual variations require detailed engineering and operational design if pursued beyond conceptual evaluation. These conceptual variations were prepared to consider issues such as setback from geographical features such as the esker, barrier effects on caribou and the overall size and shape of the piles.

The implementable conceptual variations are considered achievable and provide at least the same level of environmental protection as the original design, including the following common elements:

- technically and economically feasible;
- WRSA seepage collected to King Pond;
- metasediment waste rock covered for closure;
- overburden used in closure cover and available for reclamation;
- minimum 200 m setback from esker/Thinner Lake; and
- maintain road access to Lac du Sauvage for pit flooding.

Each of the design variations was made to address and incorporate engagement feedback.

As set out in Arctic's response to IEMA recommendation #3 (page 35: Link), a full alternatives analysis on WRSA design is not necessary nor appropriate. To be effective, design methodology should be selected to fulfill and evolve with the needs of a particular project. Arctic will continue to engage with the intent to advance to a final design concept that best reduces risks to caribou while remaining logistically and economically feasible for Arctic. Specific design details will be provided to the Board for approval in the WRSA Design Report.

To facilitate engagement on the WRSA design and the collection of Traditional Knowledge, Arctic has also developed three-dimensional computer visualizations of the Point Lake area and WRSA Design variations. This was an effort made largely to address the difficulty of providing groups, including Elders, with co-ordinated site visits due to the COVID-19 pandemic and related public health measures.

As described in Arctic's response to undertaking #3 (Link), the final design of the closure cover will substantially address the items identified by the TG in their intervention materials (including, surface material descriptions, cover vegetation, cover thickness, climate change performance, and water quality predictions and contingencies). However, Arctic is concerned about its ability to comment directly on Indigenous "cultural values" as well as the "shape, look and feel of the cover". Arctic should not be required to comment on issues on which Arctic has a limited perspective

and given the inherently subjective nature of look and feel. Such a condition should not be included in Schedule 5, Condition 3(b).

As described in Arctic's response to undertaking #4 (Link), the Point Lake WRSA Design Report will include responses to the 17 items identified by Board staff as schedule requirements, with three exceptions:

- First, The WRSA Design Report is an engineering design report. Arctic submits that a requirement of "a description of potential effects on the Receiving Environment" (#11) is not suitable for an engineering design report. This requirement could introduce confusion between this design report and the effects assessments that have been fully described in other Project submissions.

- Second, Arctic has planned and committed to provide a report on seepage quality predictions (#14) as an accompanying report to the WRSA Design Report. The seepage quality report would also provide data for the geochemical test work used. The two reports (WRSA Report and seepage prediction report) will be linked but serve different purposes (engineering design versus analytical modelling) and may have different review processes. Arctic recommends that the seepage quality predictions are reported separately from the WRSA Design Report.

- Third, the reference to "groundwater" in a "description of regular ground water monitoring around the WRSAs" (#17) is not clear. In any event, Arctic finds no reasonable rationale for this requirement regardless of whether it intends to refer to deep groundwater or shallow groundwater. There is no connectivity to the deep groundwater regime (i.e., below permafrost) at the Point Lake site and, therefore, no rationale for monitoring of deep groundwater. Given that item 15 addresses subsurface flow in the active layer (i.e., shallow groundwater), this requirement appears to be redundant to item #15 if this item intends to refer to shallow groundwater.

c. Seepage and Humidity Cell Testing

The Point Lake Project Description Report (Link) proposes that all metasediment excavated from the Point Lake Open Pit will be deposited into the WRSA. As described in the Project Description Report, nearly all (i.e., 99%) of the waste rock is expected to be metasediment.

Seepage from the WRSA area will be monitored and a number of measures will ensure that the WRSA Design Report will include sufficient protections for seepage. Geochemical testing of Point Lake metasediment is ongoing and will be used to develop seepage quality predictions. WRSA seepage and pit sump mine water are to be collected and transferred to KPSF, which is regulated and monitored through existing requirements of the Water Licence, Aquatic Effects Monitoring Program, Surveillance Network Program and Aquatic Response Framework. Seepage from the WRSA will be monitored at the toe of the WRSA in accordance with the existing WRSA

Seepage monitoring program and in collection sumps as proposed for the Surveillance Network Program.

Material placed into the overburden stockpile will not include metasediment and is not considered a water quality risk. Seepage from the overburden stockpile will be monitored and regulated under the Metal and Diamond Mining Effluent Regulations of the *Fisheries Act*. Seepage from the overburden stockpile will also be monitored as part of the annual WRSA Seepage monitoring program conducted in accordance with the Waste Rock and Ore Storage Management Plan approved under the Water Licence.

In response to Intervener recommendations that Arctic conduct additional geochemical testing specific to Point Lake metasediment (see Arctic's response to at page 51: Link), Arctic conducted and reported on additional geochemical testing, and initiated humidity cell tests of Point Lake metasediment. Arctic has committed to use the humidity cell test results, and all available relevant information, to develop waste rock seepage quality predictions for the operating and closure phases of the WRSA.

In its draft licence terms, the WLWB staff proposed adding conditions 26 to 30 to Part H for the purpose of addressing seepage prediction and humidity cell testing. (Link).

Arctic has three overriding concerns with the inclusion of requirements to conduct humidity cell testing on a "95th percentile" sample of Point Lake metasediment (draft Part H Condition 27), as identified in Arctic's comments on the draft amended Water Licence (Arctic Comment #3: Link):

- First, prescribing rigid humidity cell testing requirements in the Water Licence is a barrier to adaptive management. Detailed metasediment testing, particularly those directly relating to scientific requirements such as sampling thresholds, needs to be tailored to conditions encountered on site. Detailed geochemical tests should not be expressed as licence conditions because the availability and utility of geochemical testing requires flexibility as circumstances evolve.

- Second, and relatedly, specific conditions are better suited for management plans, such as the Waste Rock and Ore Storage Management Plan, which is submitted to the WLWB and which requires the submission of information on testing methods.

- Third, it may not be possible for Arctic to locate and test Point Lake metasediment with uniform 95th percentile solid contest/leachate statistics. It is rare to find a rock sample that has the highest concentrations of every constituent that is measured in the laboratory. Notably, none of the interveners have responded in substance to Arctic's concerns that a 95th percentile sample may not be obtainable for all constituents. The Water Licence should not include conditions that may be impossible to achieve.

The requirement for humidity cell testing on a "95th percentile" sample of Point Lake metasediment should not be included in the Water Licence. Rather, a procedure to

seek, identify and test such a sample should be made part of the Waste Rock and Ore Storage Management Plan as recommended by Arctic in its comments on the Draft Water Licence Amendment.

In respect of the termination of humidity cell testing (draft Part H Conditions 27 and 28), as identified in Arctic's comments on the draft amended Water Licence (Arctic Comment #4: Link), Arctic does not object to a process for WLWB oversight of the termination of humidity cell testing. However, the WLWB should not require unnecessary expenditures. It is costly to maintain humidity cell testing. Arctic therefore proposes that it be permitted to 'pause' humidity cell testing once it has recommended to the WLWB that tests be terminated. During the pause, data analysis will not be carried out but testing samples and equipment will be maintained in the event that the WLWB determines that humidity cell testing ought to continue. This approach should meet WLWB's needs while avoiding unnecessary costs for Arctic.

There is, in Arctic's view, unnecessary and potentially confusing overlap between a proposed Point Lake WRSA Seepage Prediction Report and Waste Rock Storage Area Design Report. (compare Schedule 5 Condition 2 and Schedule 6 Condition 6 of the WLWB's proposed draft amended licence). (Link). In particular, requirements that the Waste Rock Storage Area Design Report include "Detailed seepage water quality predictions for Construction and Closure using results from humidity cell tests and other available data" (Condition 2(b)(xvi)), "Water quality and quantity models" (Condition 2(b)(xvi)), and "Prediction of range of potential timeframes to onset of acidic conditions based on Humidity Cell Tests Water quality and quantity models" (Condition 2(b)(xviii)) are all appropriate requirements for the WRSA Seepage Prediction Report and better suited for inclusion in that report. They should not be addressed in both.

A number of conditions set out for the Seepage Prediction Report that have been included in the draft licence terms are unclear or lacking in utility. In particular, the requirement that there be an investigation into cause of consistently lower pH values in 2021 samples compared with 2019 samples (Schedule 6, Condition 6 (2)(ii)) appears to have been added in response to concerns raised by Interveners about the October 2019 SFE/NAG test results versus initial acid-base accounting of Point Lake metasediment. However, Arctic has shown that the pH discrepancies are not meaningful to metasediment characterization. Also, the SFE/NAG testing was an interim step that triggered initiation of the new humidity cell tests. The data will be described and incorporated into the planned WRSA Seepage Prediction Report such that specific re-analysis of the NAG/SFE results is not necessary. Arctic has committed to submission of a seepage quality model report accompanying the Point Lake WRSA Design Report that is planned to be submitted in the summer of 2022 (see Arctic's response to GNWT recommendation 6 at page 57: Link). Additionally, the condition for "updated concentrations" (Schedule 6 Condition 6(b)(iv)), is unclear. In any event, a requirement, as proposed by Arctic, under Schedule 6 to provide "all data and test results used in the report, including results from Humidity Cell Tests" appears to satisfy any concern that Arctic provides all available and recent data in the Seepage Prediction Report.

Certain Interveners have proposed that the Water Licence use a 1% pegmatite threshold rather than a 5% threshold to trigger further pegmatite monitoring. As set out

in Arctic's response to Intervener comments on the draft licence (Arctic response to TG Comment #15: Link). A 5% pegmatite threshold for additional pegmatite monitoring and reporting to the WLWB is appropriate. This is the threshold provided in Schedule 6 Condition 2(r) and (s) of the draft amended Water Licence: "A description of confirmatory process and field inspection program to verify pegmatite volumes in the Point Lake Waste Rock Pit and Storage Area"; and "A description for testing that will be conducted if pegmatite volumes are greater than 5% of the Point Lake Waste rock". Monitoring for proportionally very small volumes of a single rock type within the mass of waste rock is challenging and a 1% threshold is not reasonably achievable for the Point Lake Project. Arctic considers a threshold of 5% is to be achievable for the purposes of the Water Licence.

The WRSA Design Report will sufficiently address climate change projections. Schedule 5, Condition 3 (regarding the Waste Rock Storage Area Cover Design Report) includes the following three requirements: "d) Thermal modeling using current and credible climate change predictions to confirm what thickness of cover is needed and to better understand internal heat generation in the pile; e) How the cover is expected to perform with climate change; f) How the company will protect water quality if the cover does not perform as well as expected, including mitigations and contingencies;". These requirements sufficiently address climate change concerns. Certain Interveners have recommended that (See DKFN Comment #4 and TG Comment #13: Link) that requirements be included to address how the cover is expected to perform in the period after climate change predictions are reliable, but it is not useful to set out predictions now for periods after which reliable projections can be made. In any event, the current draft licence conditions (set out above) ensure that long-term concerns raised by climate change are addressed, which is the substantial issue.

8. Jay Project Conditions and Jay Project EA Measures

The Jay Project has been cancelled by Arctic, which was a noted factor in the WLWB's evaluation of cumulative effects related to the Point Lake Project. Therefore, Arctic has requested that existing conditions of the Water Licence related to Jay Project be removed to demonstrate the Jay Project will not proceed. Arctic has noted that the draft Water Licence Amendment consolidates Jay-related conditions in (new) Annex D.

Annex D of the draft amended Water Licence is introduced as "These conditions were part of the Ekati Water Licence W2020L2-0004 (formerly W2012L2-0001) with respect to the Jay Project. They have been removed from the body of the Licence on the basis of the Licensee's request". (Link). In many cases, entire conditions have been repeated in Annex D even though only the Jay-related part of the condition was requested by Arctic to be removed from the body of the Licence. Arctic also notes that the non-Jay-related parts of such conditions remain in the body of the Licence.

Arctic understands that a WLWB process may be undertaken, involving the MVEIRB, to permanently remove Jay-related conditions from the Licence and that Annex D is intended to serve as the interim repository for those conditions. Arctic's position is that Annex D contains conditions that, unless expressly set out elsewhere in the Water Licence, are not applicable to the Point Lake Project. At law, these are conditions that have no force and effect in the absence of the Jay Project being carried out.

Subject to the above comments, the Jay Project conditions do not need to remain within the draft amended Water Licence or LUP. Since the Jay Project (as originally proposed) will not proceed, conditions specific to the Jay Project ought to be removed. In the interim, Arctic does not object to their inclusion within Appendix D, so long as their inclusion within Appendix D does not require them to be implemented on the Point Lake Project or elsewhere at the Ekati Diamond Mine.

Arctic has committed to carrying forward some of the EA measures that were defined in the Environmental Assessment Report in a manner that is appropriate to the new mining plan (i.e., Point Lake Project in the absence of the Jay Project). As set out in the WLWB's preliminary screening decision, the GNWT's position has been that the Jay Project EA applied measures to mitigate environmental impacts on caribou and continue to be captured for the Point Lake Project in the WEMP, CRMP, and the CCMP:

> During the public review of the Point Lake Project Applications, the GNWT stated that it "is of the view that the impacts to wildlife and wildlife habitat associated with this Project can largely be addressed through the diligent and consistent application of the mitigation and monitoring approaches outlined in the WMMP for the Ekati Mine" (GNWT-Lands comments 28). This assessment by GNWT was made with two stipulations: (1) the removal of the Jay WRSA and Arctic's assurance that it would not proceed with the Jay Project without major revisions; and (2) the expectation that Arctic will revise the Caribou Road Mitigation Plan based on recent monitoring data

> and analysis conducted by IEMA. The Board has addressed the first stipulation in section 5.1 of this Reasons for Decision and is of the opinion that the second stipulation can be addressed through the review and approval of the WEMP under subsection 95(2) of the Wildlife Act. The Board also notes GNWT's recommendation to the Board, that "from a wildlife and wildlife habitat perspective, referral to environmental assessment is not necessary to better understand the residual effects of this development" (GNWT-Lands comment 30) (page 39: Link).

As set out in Arctic's correspondence to the MVEIRB, which is part of the record before the WLWB, some of the Jay Project EA measures have been fully implemented, some have been partially implemented and will be carried forward by Arctic with adaptation to the Point Lake Project, and some are not relevant or necessary in the absence of the Jay Project. In response to a request from the MVEIRB, Arctic provided a summary of the status and intended implementation of measures that were assumed by Arctic (Link).

Some of the Jay Project EA measures are already addressed in the Ekati Diamond Mine Water Licence. There is no need to include anything further in the Water Licence or LUP to address these. These measures are the following:

- Measure 4-2(a) Site Water Management Plan
  This measure is addressed through Arctic's proposed mine water management plans and the proposed amendment of Part H, Condition 2 to require submission of a Project update of the existing Wastewater and Processed Kimberlite Management Plan. Additionally, Arctic has submitted a Point Lake Dewatering Plan for WLWB approval.

- Measure 4-3 Fine Processed Kimberlite
  This measure has been completed through the WLWB's 2019 approval of the mined-out Panda and Koala pits as a Processed Kimberlite Containment Area under the Wastewater and Processed Kimberlite Management Plan (Part H, Condition 2).

- Measure 6-5 Traditional Knowledge-based Caribou Monitoring and Mitigation
  The TKEG has been in effect on a site-wide basis, which will include the Point Lake Project, since 2017. Use of the TKEG to provide Traditional Knowledge for the Project generally is addressed in the Water Licence through existing Conditions: Schedule 1, Condition 1(x); and Schedule 9, Condition1(d).

- Measure 7-1 Traditional Knowledge Management Framework
  The Traditional Knowledge Management Framework has been in effect on a site-wide basis, which will include the Point Lake Project, since 2017. The Framework is a defined term in the Water Licence and the requirement to apply the Framework is addressed in the Water Licence through existing Part B, Condition 17.

- Measure 9-1 Incineration – Stack Testing and Reporting

An Incineration Management Plan as approved by the WLWB is implemented as part of the site-wide Waste Management Plan required under existing Water Licence Part H, Condition 1.

Some of the Jay Project EA measures are relevant to the Point Lake Project but are being carried forward by Arctic, including under mechanisms other than the Water Licence and LUP, so they ought not to be addressed in the Water Licence or LUP. These measures are the following:

- Measure 6-1 Road Mitigation from Caribou Impacts
  The WEMP and CRMP were approved by the GNWT in 2021 under the *Wildlife Act* as satisfying the requirements for a Wildlife Monitoring and Management Plan on a site-wide basis at the Ekati Diamond Mine, which will include the Point Lake Project. In its approval, the GNWT required that the WEMP undergo public review and update in concert with the 2023 Water Licence Renewal process. This provides an approved CRMP that will apply to the Point Lake Project and ensures that the WEMP/CRMP remain current through a scheduled public review and update. Additionally, Arctic is developing a Point Lake Project Addendum to the WEMP that ensures that Project-specific items are implemented prior to the scheduled full review and update of the WEMP in 2023. Conditions 38 and 39 of the proposed draft LUP also provide for a Road Construction Plan that includes caribou crossings (see Arctic's comment at page 22 above).

- Measure 6-2(a) Caribou mitigation plan
  A Caribou Compensatory Mitigation Plan was prepared for the Jay Project. Arctic has committed to carrying the this plan forward, with adaptations appropriate to the Point Lake Project. Some of the commitments of the Caribou Compensatory Mitigation Plan have been implemented and are complete and others are undergoing engagement prior to implementation throughout the life of the Point Lake Project.

- Measure 6-3 Air Quality Emissions Monitoring and Management Plan
  The Air Quality and Emissions Monitoring and Management Plan was approved by the GNWT in 2017 and will be implemented throughout the construction, operation and closure phases of the Point Lake Project.

- Measure 6-4 Dustfall Standards
  Arctic applies the interim dustfall objective that has been provided by GNWT to inform its actions to reduce impacts to caribou and caribou habitat from dustfall on a site-wide basis.

- Measure 6-5 Traditional Knowledge-based Caribou Monitoring and Mitigation (re zone of influence research)
  Arctic has committed to conducting Zone of Influence Research on collaborative basis that includes Traditional Knowledge as part of the review and update of the WEMP that is required by the GNWT under the *Wildlife Act* by October 2023.

- Measure 7-2 On the Land Culture Camp
  Arctic has committed to carrying this measure forward and to conduct multi-party engagement on an implementation plan in 2022.

- Measure 9-2 Reporting on Greenhouse Gas Emissions and Management
  The Ekati Diamond Mine reports emissions to the National Pollutant Release Inventory on annual basis for the Ekati Diamond Mine and through regular site-wide Air Quality monitoring data reporting, which can be found on the WLWB online public registry. Greenhouse gas emissions are reported to the ECCC Greenhouse Gas Reporting Program.

- Measure 13-1 Monitoring and Adaptive Management by Dominion
  Environmental monitoring and management at the Ekati Diamond Mine is conducted on an adaptive management basis in accordance with the Environmental Agreement (Article 1.2(b)) and individual authorizations under the Water Licence. Adaptive management is reported through annual reports and the 3-year Environmental Impact Reports required under the Environmental Agreement.

- Measure 13-2 Engagement on Cultural Impacts
  Arctic has been actively building relationships with IGOs including ongoing engagement on identifying and mitigating potential cultural impacts such as through the Traditional Knowledge Management Framework.

9. Closure and Reclamation

Closure and Reclamation of the Ekati Diamond Mine is described in the ICRP. The reclamation goal is to return the Ekati Diamond Mine site wherever practicable to viable, self-sustaining ecosystems that are compatible with a healthy environment, human activities, and the surrounding environment. Closure and reclamation of the Project will align with and ultimately will be integrated into the ICRP. The limited site infrastructure and relatively small scope of the Project generally preclude progressive reclamation such that site reclamation will proceed after completion of mine operations.

As set out in Arctic's responses to Licence Comments (See TG Comment #17 Link) it is premature to set out a timeframe for flooding of the Point Lake open pit and the covering of waste at this stage. In any event, it is inappropriate to include such timelines in the Water Licence, as they would eliminate flexibility that is needed for ongoing operations, design and engagement processes. Arctic has initiated technical work on seepage prediction and WRSA design that will inform future discussions of reclamation schedules under the ICRP, which is the appropriate process for that discussion. In any event, the Reclamation and Closure Activities and Reclamation Security Estimate for the Point Lake Project (May 2021) (see Appendix F: Link), the contents of which will be incorporated into the ICRP, commits to the following: (S.2.1) "Filling of the Point Lake open pit will occur as soon as reasonably achievable following the completion of mining and a determination that filling with water would not compromise future mining opportunities"; and (S.2.3) "Placement of the WRSA cover will occur at the completion of mining to initiate the long-term benefits of the cover as soon as reasonably achievable".

As set out in the response to GNWT recommendation #12 (page 60: Link), Arctic has committed to utilizing Point Lake overburden for reclamation. Arctic will use overburden to cover the Point Lake metasediment pile(s), for modification of the Lac du Sauvage Road, and, as determined through the ICRP/CRP, land reclamation in the general Point Lake area. The dominant reclamation use of overburden will be for covering the Point Lake metasediment pile(s), which is projected to reduce the size of the overburden stockpile in the order of 25%. However, Arctic cannot dedicate all of the Point Lake overburden for uses in reclamation given the economic and logistical restraints of doing so.

Arctic maintains (consistent with its response to GNWT recommendation #13 at page 61: Link) that an appropriate incremental increase in reclamation security for the Point Lake Project is $22,672,400 ($998,684 land plus $21,673,716 water).

This incremental change in reclamation security as a result of the Point Lake Project has been estimated using the RECLAIM costing model (Version 7.0), developed and maintained by the GNWT, preferred by the WLWB (Link). Importantly, Arctic's estimate maintains internal consistency within the RECLAIM model with previous WLWB decisions and unit rates. This is an appropriate and reasonable approach for an incremental increase for a new project and is the approach utilized by the WLWB for previous similar increases. GNWT has recommended a greater incremental increase.

However, Arctic does not agree. It inappropriately, in Arctic's view, adopts a new and increased unit rate for the haulage and placement of cover materials. The new rate is also nearly double the unit rate for the same work that the WLWB has previously approved. GNWT acknowledges that the new unit rate is based on a low-efficiency truck sizing factor originating from a pessimistic assumption of possible future mobilization on a theoretical future winter road. This assumption was made unilaterally without proper information or consultation.

Additionally, GNWT has included inflation without providing supporting data (which is contrary to previous WLWB direction). Arctic is concerned that the GNWT's inflationary inclusion may inadvertently double up on Arctic's recent inflationary factors. Arctic strongly recommends that the WLWB maintain internal consistency within the approved RECLAIM estimate at this time (as per Arctic's recommended increase). Not maintaining internal consistency erodes confidence and credibility of the estimate and confounds future review and decision-making. Arctic and GNWT plan a review of the estimate to align with ICRP V.3.1. The WLWB's upcoming (2022) review of ICRP V.3.1 will be a more appropriate process for reviewing and making determinations on changes of the nature proposed by GNWT.

10. Conclusion

The primary concern that has been heard throughout Arctic's engagement and the WLWB's review process has been post-closure caribou movement and this is reflected in a number of Intervener Closing Arguments. In some instances, Intervener concerns are expressed in the form of recommendations that the WLWB should include various new caribou-related conditions into the Water Licence and LUP. Arctic respects that Interveners have concerns and Arctic continues to work to address concerns, including through the wildlife-focussed workshop on February 15 and 16, 2022. Arctic is committed to seeking ways to address Intervener concerns while ensuring a healthy operating future for the Ekati Diamond Mine that benefits all parties. Arctic believes the draft Water Licence Amendment and LUP issued by Board staff has generally found the appropriate balance between wildlife regulation under the *Wildlife Act* and under the *Mackenzie Valley Resource Management Act*.

Subject to the comments in this Closing Argument and Arctic's comments on the draft Water Licence and LUP, Arctic respectfully requests that the WLWB issue the amended Water Licence and LUP and permit the Point Lake Project to proceed. Arctic has consistently emphasized the urgency of the Point Lake Project generally, and the importance of conducting the dewatering program during summer 2022. Arctic acknowledges the work of the WLWB and Board Staff to conduct this proceeding according to the workplan schedule. Arctic requests that the WLWB continue to adhere to the workplan that indicates issuance of the Water Licence amendment and LUP for Ministerial authorization in April 2022. Arctic believes that the WLWB has all of the necessary evidence to do so.

Further, Arctic continues to request that the WLWB approve the proposed Point Lake Dewatering Plan (Version 2.2) on the basis of the public review conducted through this Amendment proceeding and without further public review.

Arctic would once again like to thank all parties to the water licencing process for their participation and input into the review of the Application materials and supporting documentation and to the WLWB and its staff for running an efficient and effective process.