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Wek'èezhì Land and Water Board
#1-4905 48th St. | Yellowknife, NT | X1A 3S3

Attention: Rhiana Bams (rbams@wlwb.ca)

Re: Deninu Kue First Nation – Closing Argument for the Arctic Canadian Renewal Application for a type A Water License (W2022L2-0001)

The Deninu Kue First Nation is pleased to provide the following closing argument regarding the Arctic Canadian Diamond Company Ltd. (Arctic Canadian) Renewal Application for a type A Water License (W2022L2-0001). To date, the DKFN has participated in this review process in good faith to engage in a constructive resolution process that identifies and addresses issues and concerns relating to the mining project and the water license renewal. This has included participation in technical sessions, submission of an intervention, presentation at the public hearings, and by providing comments and recommendations on the draft water license. We expect that the issues and concerns raised by the DKFN throughout this review process will assist the Wek'èezhì Land and Water Board in enacting strong conditions and provisions in the license to facilitate compliance responsibilities for Arctic Canadian. In these closing arguments we summarize our primary concerns with the proposed changes to the water license.

Application of Terrestrial Quality Objectives – We appreciate the effort by Arctic Canadian to develop a method and metrics that are protective of terrestrial use. Arctic Canadian considers seepage at the Ekati Mine to be a non-point source of effluent that meets the provisions of Section 4.3.2 of the LWB Waste and Wastewater Management Policy, which states:

“When control measures and/or collection systems are not proposed for non-point source effluents, the Board may consider setting EQC and other discharge criteria directly in licence conditions as described above for a point source effluent. However, since there is typically no distinct final discharge point where a non-point source effluent can be controlled before it enters the receiving environment, and the discharge pathway can also be variable over time, establishing discharge criteria and a response framework in a management or monitoring plan submitted for Board approval may be more practical than setting EQC in some cases.”

It is Arctic Canadian's position that this exert explains the purpose of the Seepage Response Framework and the purpose of the terrestrial quality objectives being proposed for use in concert with the current

Effluent Quality Criteria. It is also Arctic Canadian's position that the Seepage Response Framework and Terrestrial Quality Objectives (TQOs) are discharge criteria that can be approved by the Board as part of the Waste Rock and Ore Management Plan. Further, in response to Undertaking #6 from the Public Hearing, Arctic Canadian amended its proposed draft condition for Schedule 6 Condition 2(u) to include details of the WRSA Seepage Response Framework including:

- Definitions, with rationale, for WRSA seepage quality criteria applicable to the Receiving Environment of the seepage, including TQOs that are protective of use of the terrestrial environment;
- Locations where TQOs will be applied for evaluation of seepage quality for each sampling event; and
- Evaluation against TQOs at the closest sampleable location to the WRSA.

We feel this approach to protecting terrestrial use is appropriate with the following additions and points of clarification. In its proposed draft condition for Schedule 6 Condition 2(u), Arctic Canadian suggested providing notification to the Board within 60 days of when an exceedance is detected. An exceedance requires preparation of a response plan, upon where there is a 90 day review. So, implementation of a response would occur a minimum of five months after an exceedance occurs. We recommend notification of exceedance occur immediately, which aligns with condition B.22 of the draft water license.

Compliance with the Metal and Diamond Mining Effluent Regulations regarding pH levels – From the evidence provided during the public hearing and subsequent undertakings, it is clear that the Arctic Canadian must comply with the Metal and Diamond Effluent Regulation and ensure that any wastewater or waste entering the receiving environment has a pH level equal to or greater than 6.0 but is not greater than 9.5. In situations where this is not achieved (i.e., pH levels below 6.0), Arctic Canadian has outlined a method (Public Hearing Transcripts Day 1, pp.68-69) to show due diligence and work with the GNWT Inspector to show these types of non-compliance events are the result of the natural tundra environment and not a result of the mining activity. Therefore, we recommend the applicable condition in the water license state: *Any Wastewater or Waste from the Project that enters Receiving Water shall have a pH between 6.0 and 9.0 unless it can be demonstrated that a pH outside this range was not caused by mine activities.*

In closing, DKFN has an obligation to its band membership to ensure that "As long as the sun shines, rivers flow and grass grows" based on our Treaty with the Crown, future generations should also be able to practice their inherent right to hunt, fish, trap and gather in co-existence in our traditional territory. Where there is impact and loss, then we must be given the opportunity for reasonable informed consent, consultation and accommodation benefits. This duty is vested with the crown in their fiduciary obligation to DKFN based on our Treaty. We feel the steps taken in this review process and the forthcoming water license conditions are working to address the DKFN rights; although, future engagement and collaboration with the Wek'èezh ı̨ Land and Water Board and Arctic Canadian will be essential moving forward.

Sincerely,

Dave P.J., DKFN Sub-Chief

for

Chief Louis Balsille

cc. Dr. Marc d'Entremont, DKFN Technical Advisor (mdentremont@lgl.com)