



Tłıchǫ Government

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October 23, 2015

Chuck Hubert, Senior EA Officer
Mackenzie Valley Environmental Impact Review Board
Box 938
Number 200 Scotia Centre
5102-50 Ave
Yellowknife, NT
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Re: Tłıchǫ Government – EA1314-01

Please see attached the Tłıchǫ Government closing submission for this environmental assessment proceeding.

If you have any questions or require any additional information, please contact Mr. Sjoerd van der Wielen at 867-392-6381 Ext: 1351 or at SjoerdvanderWielen@tlicho.com

In Tłıchǫ Unity,

Original Signed

Sjoerd van der Wielen
Lands Protection Manager
Department of Culture and Lands Protection

Tłıcho Government

Closing Submission

on the proposed
Dominion Diamond Ekati Corporation Jay Project EA

EA1314-01 (2013)

Submitted to the Mackenzie Valley Environmental Review Board for the Jay Project

October 2015



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Summary List of Suggested Conditions

1. Tłıchǫ Government requests the Board to set a measure that DDEC maintain the reinstated Workplace Learning Program and funding of adult educator positions, with the goal of improving the education literacy of employees, and that the continued operation of the program becomes a condition of the Report of Environmental Assessment.
2. Tłıchǫ Government recommends the Board set a condition requiring an independent third party review, by an expert familiar with the modeling predictions for pit stratification at closure (CE-QUAL-W2 model – ref: Cole and Wells 2008¹, expertise should be with version 3.5 or higher).
3. The Tłıchǫ Government affirms the need for specific commitments in the Commitments Table, namely all of the offsetting conditions. Dominion states they are committed to identify potential offsetting measures for the Jay Project that meet community interests and meet the requirements of the Fisheries Protect Policy Statement (DFO 2013) and comply with applications for Authorization under the Fisheries Act Regulations.
4. Given we expect there will be impact on the Bathurst caribou herd, the Tłıchǫ Government recommends the Board require that there be direct project mitigation.
5. Given we expect there will be impact on the Bathurst caribou herd, the Tłıchǫ Government recommends the Board require DDEC will provide additional financial offsetting to support traditional knowledge-based research on impacts to the Bathurst Herd from diamond mining. This will include a yearly provision equivalent to the amount provided to support western research to support TK-research, and a minimum-security deposit of 10% of the full deposit to ensure ongoing funding and support for TK-based research on caribou.
6. Given we expect there will be impact on the Bathurst caribou herd, the Tłıchǫ Government recommends the Board require TK-based research program on mining impacts to the Bathurst herd will be developed and delivered with full involvement by all IBA communities.
7. Given we expect there will be impact on the Bathurst caribou herd, the Tłıchǫ Government recommends the Board require direct financial compensation, targeted only to community hunts and cultural activity, will be paid to IBA communities to offset the impact on Aboriginal rights to harvest incurred by activities of DDEC.
8. DDEC to provide at a minimum \$200,000 of direct financial support annually from the start of construction to mine closure, and \$100,000 of direct financial support thereafter until all adverse effects on the Bathurst caribou herd from mine development have been reversed (as determined by an expert panel of reviewers), or for 20 years post-closure, whichever timeframe is less, for the development and implementation of a *Caribou Monitoring Strategy*.

¹ Cole TM, Wells S. 2008. CE-QUAL-W2: A Two-Dimensional, Laterally Averaged, Hydrodynamic and Water Quality Model,

Introduction

The Tłıchǫ Government is concerned with the cumulative effects that the Jay Project will add to the region. The Tłıchǫ Government recognizes that this proposed diamond mine in isolation constitutes a very small additional footprint, however, given the recent announcement concerning the development of the Sable kimberlite pipe deposit, consideration of the combined footprint made from both projects must be made. Both projects will create more traffic leading to the accumulation of dust in the region, and greater air quality effects, impacting on caribou habitat and foods. In the context of the operating and soon to be operating diamond mines and the status of the Bathurst caribou herd, the Tłıchǫ Government is highly concerned with the cumulative effects of development.

There has been a tremendous good faith effort and work by the proponent in this regard, and the outcomes of the meetings and undertakings reflect the extent of work. The Tłıchǫ Government appreciates this effort.

Context

The Tłı̨chǫ Government participates in many intergovernmental forums to protect and maintain the health of the Bathurst caribou.

This region contains an important cultural area, with historical and modern use.

In the summertime over in that area, we really made use of the resources in the Ekati area. And so now what's happening is a lot of the governments and the mining companies are making money from it. In the past, our people -- that area of land -- Ekati area of land survived through the caribou. The caribou provided clothing, shelter, food. (Elder Philip Dryneck, September 17, 2015)

Tłı̨chǫ citizens share many concerns related to water and water quality, as well as the effects of blasting, mining and existing and future development on the wellbeing of caribou and water and water quality.

And -- and the caribou diet is only with lichen. Now, if all of that is covered with dust, they're not going to be able to eat. (Elder Elizabeth Michel, September 17, 2015)

People have always said that the caribou are important. People here know the land is very important. These are the people who use it, the water, the land, and the wildlife. (Chief Clifford Daniels, September 17, 2015)

Therefore, the Tłı̨chǫ Government requires careful consideration of issues related to water quality, AEMP, closure and caribou. The key driver to how all of these issues should be interpreted is through the *Mackenzie Valley Resource Management Act* (March 30, 2004), and the *Tłı̨chǫ Agreement*:

Back when the treaty was first settled, Monfwi has said this area, this whole area, he says, I will only agree to this treaty if we have the freedom -- freedom to hunt on this land. He says that's how he signed the treaty ...

He was -- he was also a great leader for us. These days I have seen so many changes over the years. We were raised on country foods, but today we are banned from hunting caribou. You have to take elderly people like me into consideration, because our main source of diet was country foods like caribou, meats and fish. And I'm sure there must be some documents floating around in some of the offices with the original statements from ... from the treaty when it was signed.

Since we've been living using that as our policy and as our rules since. Up until -- up until now we were nev ... never ban from hunting any kind of wildlife on our land. Now, I cannot understand why all these caribous are declining. dis ... disappearing to? (Elder Elizabeth Michel, September 17, 2015)

Socio-economic Effects

The Tłıchq Government notes the many commitments made through the Commitment Table, including:

- Training and employment for women (PR#448)
- Exit interviews and identification of barriers for women (PR#448)
- A new Human Resources Tracking system, Contractor Employment Statistics, tracking plans for career development, internal processes for managing careers, new Community Liaisons hired through communities (PR#561)
- Workplace Learning Program and an adult educator position (PR#255)

The Tłıchq Government considers these all to be management tools to increase the participation of northern Aboriginal men and women in the mines. There is one tool that has always stood out for the Tłıchq Government: the Workplace Learning Program with the funded position of the adult educator position. The Tłıchq Government feels that this program was one of the single most important measures for increasing adult literacy and numeracy (and contributing to career progression) in the early years of the operation of the Ekati mine.

In the mid-2010s, the company ended this program, ceasing funding for the adult educator position. At the time, this was a significant loss to adult Tłıchq workers, who sought in their off-hours to advance their own learning. It is a measure that is vital to the career progression of Tłıchq workers. The Tłıchq Government recognizes that the company recently reinstated this program and is addressing this point to ensure it's continued existence.

Socio-Economic: Condition 1

Tłıchq Government requests the Board to set a measure that DDEC maintain the reinstated Workplace Learning Program and funding of adult educator positions, with the goal of improving the education literacy of employees, and that the continued operation of the program becomes a condition of the Report of Environmental Assessment.

Water and Fisheries

Tłchq Government is concerned with the modeling that has been done for pit stratification at closure. Our understanding is that there may be significant benefit if there is an independent third party review of the modeling predictions for pit stratification.

Water Quality: Condition 2

Tłchq Government recommends the Board set a condition requiring an independent third party review, by an expert familiar with the modeling predictions for pit stratification at closure (CE-QUAL-W2 model – ref: Cole and Wells 2008², expertise should be with version 3.5 or higher).

Water Quality: Condition 3

The Tłchq Government affirms the need for specific commitments in the Commitments Table, namely all of the offsetting conditions. Dominion states they are committed to identify potential offsetting measures for the Jay Project that meet community interests and meet the requirements of the Fisheries Protect Policy Statement (DFO 2013) and comply with applications for Authorization under the Fisheries Act Regulations.

² Cole TM, Wells S. 2008. CE-QUAL-W2: A Two-Dimensional, Laterally Averaged, Hydrodynamic and Water Quality Model, Version 3.6; User's Manual. Prepared for US Army Corps of Engineers Waterways Experiment Station. Washington, DC, USA.

Caribou

The Tł̨chq̨ Government is of the view that residual effects from the Project are expected to contribute negatively to the cumulative effects on barren- ground caribou health, energy loss, calf production, and survival. Concerns were constantly raised at the Community Hearings in Behchoko:

And so -- so during the fall time, when the caribou would go into the bush ... into the bushland and live in the bush for a little while, and then further up north to the barren land. So over time, as our wildlife is also suffering, and is ... as our wildlife is getting less in our lands, sometimes we have such a hard time ... such a long time looking for caribou meat, or wildlife. And because we're having such a hard time looking for wildlife, is the mining company able to help us? (Elder Joseph Judas, September 17, 2015)

And so many, many years as we are here today in regard to the barren land caribou it has lessened. And also, in regard to GNWT wildlife division and we're questioning each other why is it that our caribou has gone down in numbers. By working together within one (1) year if we put a management of ... caribou management together, maybe a monitoring program together, maybe in regard to wherever there is mining activities happening in our ... our land we need to seek out those situations. We don't exactly know what is going on around the mining areas. (Chief Clifford Daniels, September 17, 2015)

We know in the past that they talked about setting up a project where we monitor the caribou movement, caribou activities around all the mines in the northeast are the things that we need to talk about, but that's all I'll say for now. (Chief Clifford Daniels, September 17, 2015)

We recognize that there will be a new Ekati Mine Caribou Road Mitigation Plan, which advances existing mitigation measures to further reduce risks to caribou.

A key problem with the mandate of the EA is that measures are all directly placed within the context of the mine footprint, while we are dealing with a migratory species.

We acknowledge that Dominion Diamond has committed to prepare a Caribou Mitigation Plan within one year of the acceptance of the Report of Environmental Assessment. We have specific suggestions on the approach that is being spearheaded by the proponent.

Caribou: Condition 4

Given we expect there will be impact on the Bathurst caribou herd, the Tł̨chq̨ Government recommends the Board require that there be direct project mitigation.

Caribou Mitigation

Caribou: Condition 5

Given we expect there will be impact on the Bathurst caribou herd, the Tłıchǫ Government recommends the Board require DDEC will provide additional financial offsetting to support traditional knowledge-based research on impacts to the Bathurst Herd from diamond mining. This will include a yearly provision equivalent to the amount provided to support western research to support TK-research, and a minimum-security deposit of 10% of the full deposit to ensure ongoing funding and support for TK-based research on caribou.

Caribou: Condition 6

Given we expect there will be impact on the Bathurst caribou herd, the Tłıchǫ Government recommends the Board require TK-based research program on mining impacts to the Bathurst herd will be developed and delivered with full involvement by all IBA communities.

Caribou: Condition 7

Given we expect there will be impact on the Bathurst caribou herd, the Tłıchǫ Government recommends the Board require direct financial compensation, targeted only to community hunts and cultural activity, will be paid to IBA communities to offset the impact on Aboriginal rights to harvest incurred by activities of DDEC.

Caribou Monitoring

Our experience of company led research is that it generally tends to be selective in the engagement of traditional knowledge. Essentially, traditional knowledge holders are pulled in for one-day sessions to “give” their knowledge, or worse the company “cherry picks” the “TK” information from community meetings, rather than participating in comprehensive traditional knowledge research.

DDEC has committed to support TK-based monitoring in PR#558:

The Developer shall provide ongoing support, in kind or financial, to the aboriginal parties in order that they can manage and keep track of TK that is relevant to the Project. This TK will be shared with the Development in accordance with the sharing agreement and used for environmental management at the Ekati mine.

To that end the Tłıchǵ Government proposes:

Caribou: Condition 8

DDEC to provide at a minimum \$200,000 of direct financial support annually from the start of construction to mine closure, and \$100,000 of direct financial support thereafter until all adverse effects on the Bathurst caribou herd from mine development have been reversed (as determined by an expert panel of reviewers), or for 20 years post-closure, whichever timeframe is less, for the development and implementation of a Caribou Monitoring Strategy.

This Strategy shall include:

Convening an expert panel, or using an already existing panel approved by all IBA affected communities, to develop the Strategy, including traditional knowledge holders identified by the IBA communities and caribou scientists. The panel will develop a terms of reference that includes working at arms-length from DDEC and the ability to report results directly to the community at large (i.e., without review from DDEC).

During each season (roughly four times annually) the Strategy shall include on the ground monitoring of caribou movement patterns, cow/calf ratios, mortality rates, body condition, insect harassment, diet, and other indicators of caribou herd viability to be determined by the expert panel.

Annual reporting to the communities and DDEC about the condition of the Bathurst caribou herd, including reporting methods that are appropriate for community engagement.

In addition, DDEC will develop a clear mechanism for temporary (seasonal or when caribou are in the vicinity of the mine) halting of mine work and/or introducing additional mitigations and offsets, should the Bathurst caribou herd population continue to decline.

Road Mitigations

Further to the mitigations outlined in DDEC's response, the definition of a caribou group will be changed to "1 (one) or more caribou." This revision is important because discerning males and females is challenging from a distance.

Conclusion

The Tł̥chq Government made a number of suggestions in our Technical Report (PR#532), which we stand by in our conclusions. We observe that many Tł̥chq citizens in the Behchoko Community Hearings expressed a concern that there will be significant adverse impact on the environment. Our conditions have been carefully considered. We look forward to the Report of Environmental Assessment. The Tł̥chq Government wishes the Review well in its consideration of the Section 128 decision that is now in its hands.