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**Via e-mail:** ExtensionVictorExtension@ceaa-acee.gc.ca; ellen.campbell@ceaa.gc.ca

**RE: CEAA Draft Environmental Impact Statement (EIS) Guidelines for De Beers Canada Incorporated Victor Diamond Mine Extension Project (Registry reference number 80043).**

Dear Ellen,

On May 28, 2013, the Minister of the Environment, by [Ministerial Order](#), designated the Victor Diamond Mine Extension Project (Project) as requiring an environmental assessment under the *Canadian Environmental Assessment Act, 2012* (CEAA, 2012). De Beers Canada Incorporated (De Beers) proposes the construction, operation, and decommissioning of a second pit and additional ancillary components, located just northwest of the existing Victor Diamond Mine, approximately 100 km west of Attawapiskat First Nation. The second pit is expected to have a production capacity of just over 9,000 tonnes per day with a mine life of roughly seven years.

Wildlife Conservation Society (WCS) Canada seeks to be recognized as an interested party by De Beers and the Canadian Environmental Assessment Agency (Agency) for the purposes of public consultation and updates on the Project in the future. Our comments on the Draft EIS are based on our respective capacities as scientists specializing in fish and wildlife ecology, conservation biology, and landscape ecology in the region on behalf of WCS Canada (Appendix 1). Relevant to the Victor Diamond Mine Extension Project, WCS Canada staff, Cheryl Chetkiewicz, is conducting a pilot project simulating cumulative effects in the James Bay Lowland ecoregion with future land use scenarios that include the Victor Diamond mine, extension projects for kimberlite, and related infrastructure. In addition, Justina Ray conducted an ecological study of wolverine and extensive aerial surveys for large mammals including caribou in northern Ontario covering most of the Hudson and James Bay Lowlands. She also participated in some stages of the federal environmental assessment process for the Victor Diamond mine and has participated in AMEC caribou aerial surveys in and around the mine site at the invitation of DeBeers.

Before commenting on the EIS itself (both general and specific comments), we would like to take this opportunity to consider the revised EA process under CEAA, 2012 as this has direct implications for the effectiveness of this particular assessment and the precedent it sets in Ontario's Far North. For the first time, CEAA, 2012 has introduced an enforceable decision statement at the conclusion of the review process -- a long-standing limitation of federal-level environmental

assessment (EA) in Canada (Gibson 2012)<sup>1</sup>. However, we highlight three risks of applying CEAA, 2012 in Ontario's Far North that increase the likelihood of poor environmental decision-making and undermine the practical value of change in federal EA including: 1) narrowing the scope of assessment by federal agencies; 2) EA harmonization with Ontario EA; and, 3) the aggressive and shortened timeframes for public comment.

### **Narrowing the scope of EA.**

The scope of assessments under CEAA, 2012 has been dramatically narrowed to federal interests and responsibilities such as the protection of components of the environment that are "within the legislative authority of parliament". For this Project, only a restricted range of environmental components under federal jurisdiction will need to be addressed (e.g., aquatic species at risk, migratory birds, certain kinds of fish - commercial, recreational, subsistence- and their habitats, some navigable waters). Previous federal EAs tended to focus on potential impacts to a wide range of valued ecosystem components (VECs) - now called Valued Components (VCs) - providing more opportunities to ensure comprehensive or integrated attention to environmental considerations (Gibson 2012). For example, in the Project, it is unclear how the public can know what "directly linked or necessarily incidental to federal decisions" (p. 36) means exactly. This has important implications for harmonization with provincial EA which is expected to address areas that aren't related to federal decisions (see below). While there is some potential to broaden the scope to additional components (e.g., transboundary issues, current use of lands and resources for traditional purposes), this extent has not been defined by the Agency and remains vague. We recommend that regulating agencies define this at the EIS guidelines stage and provide direction to the proponent.

### **Harmonization with Ontario EA.**

A key stated rationale for CEAA, 2012 was concern about duplication between federal-provincial assessment processes. While we agree duplication should be avoided, the narrowing of scope under CEAA, 2012, with no regard for the relative strength of Ontario's EA, particularly for private sector projects, undermines environmental decision-making regardless of federal interest. The consequence is a shift towards reliance on the province for EA (Gibson 2012). Ontario and the Government of Canada signed an agreement in 2004 that commits both governments to conduct a cooperative EA while retaining their respective decision-making powers in cases where a project is subject to both provincial and federal environmental assessment legislation<sup>2</sup>. With the introduction of the CEAA, 2012, it is unclear how this agreement will be implemented. It is unclear to us how harmonization will occur for this Project given private sector exemptions under Ontario's *Environmental Assessment Act* (EAA) and Ontario's *Endangered Species Act* (e.g., *Endangered Species Act, 2007* - O. Reg. 176/13, May 31, 2013). Consequently, we remain concerned about how harmonization offers confidence that the public interest in Ontario's Far North is being addressed through federal or provincial EA.

### **Public participation in EA and the role of scientific review under CEAA, 2012.**

CEAA, 2012 creates challenges for the public review, including independent scientists, of new projects in Ontario's Far North because of the discretionary ability of the Agency to determine whether projects get assessed in the first place and the reduced time for public comments on projects (20 days). In addition, only "interested parties" can participate in review

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<sup>1</sup> Gibson, R. B. 2012. In full retreat: the Canadian government's new environmental assessment law undoes decades of progress. *Impact Assessment and Project Appraisal* **30**:179–188.

<sup>2</sup> Canada-Ontario Agreement on Environmental Assessment Cooperation (2004), online: <http://www.ceaa-acee.gc.ca/default.asp?lang=En&n=FD1A10DF-1>

panel hearings, implying that members of the public that do not meet the definition of interested party can be excluded from the EA process (Doelle 2012<sup>3</sup>).

Finally, Aboriginal interests, concerns, and follow-up are complex and the aggressively shorter time limits compound these challenges. We suggest the Agency consider more explicitly the fundamental challenges with Canadian Indigenous people's experience with federal EA. Ample evidence documents an historical marginalization by federal and provincial government in decision-making regarding projects and ongoing challenges with the capacity to participate in EA.

Please contact Cheryl Chetkiewicz ([cchetkiewicz@wcs.org](mailto:cchetkiewicz@wcs.org)) or 807-472-1440 if you require further clarification on our comments.

Sincerely,



Cheryl Chetkiewicz, Ph.D.



Justina Ray, Ph.D.



Jenni McDermid, Ph.D.

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<sup>3</sup> Doelle, M. 2012. CEAA 2012: The End of Federal EA as We Know It? *Journal of Environmental Law and Practice* **24**1.

## General Comments on the Draft EIS:

***Recommendation 1. The general lack of guidance on Valued Components (VCs) and cumulative effects creates uncertainties in analyses of the impacts of the Project in the Far North where systems are dynamic and subject to climate change. Federal government and proponent should consult with scientists with experience in aquatic and peatland ecosystems as well as climate change scenarios for northern sub-Arctic environments in assessing the Project.***

**Northern boreal ecosystems are highly dynamic and widely acknowledged as vulnerable to climate change.** Aquatic and terrestrial systems in the boreal are dynamic in nature due to large-scale processes like fire, strong winds and flooding as well as the presence of discontinuous permafrost. The impact of climate change is more pronounced in northern latitudes because ecosystem processes are sensitive to direct and indirect effects of temperature. These dynamics have implications for agencies charged with addressing predictability and manageability of impacts and underscore the need for new development to address operations under various futures given climate change predictions. The Far North Science Advisory Panel Report<sup>4</sup> emphasized a number of uncertainties related to our rudimentary, science-based understanding of this remote and dynamic environment. While the EIS includes climate change considerations in project post-closure plans in 7.1.3 and permafrost temperatures in 9.1.2, we suggest that a more rigorous approach through scenario planning and available regional climate change models be included in the EIS to assess adverse effects. Economically, one area where climate change has serious implications for De Beers operations is the viability (temporal and spatial) of winter roads which remain critical to its operations in this region.

**The Project will be situated in and destroy portions of provincially, nationally, and globally significant peatland ecosystems.** Peatland ecosystems are critical components of the global carbon cycle and have been implicated in regulating ecosystem services, including climate regulation, water quantity and quality, and erosion controls. Peatland ecosystems sequester and store carbon at rates that surpass tropical forests. Ontario's peatlands currently provide about a tenth of the globe's cooling benefit and offset as much as one third of southern Ontario's carbon emissions<sup>4</sup>. As such, peatlands are important components of provincial, national and international mitigation strategies to address greenhouse gases (GHGs) from industry and transportation. There is a clear need to connect these costs and benefits explicitly in government policies, plans and programs focused on climate change.

***Recommendation 2. The Federal Government should seek agreement with Ontario to establish a regional strategic environmental assessment (R-SEA)***

A regional SEA would place the Project in context given reasonably foreseeable expansions by De Beers to their additional kimberlite holdings in the region and the high exploration activity associated with the Ring of Fire and intended development upstream of the Project. Piecemeal approaches to decision-making, based on federal interests, cannot address a number provincial policies, plans and programs regarding development, conservation, and land use planning which have significant implications for development trajectories and are not integrated with provincial EA. Finally, in the absence of a robust federal EA, Ontario's EA does not address cumulative effects and private sectors such as mining companies enter into Individual EA on a voluntary basis.

One area that would benefit from a more comprehensive SEA approach that is relevant to the Project is the design, effectiveness, and evaluation of monitoring being conducted in the region. At present, monitoring results and reports are

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<sup>4</sup> <http://www.mnr.gov.on.ca/en/Business/FarNorth/2ColumnSubPage/266512.html>

not publicly available. To our knowledge, there have been no syntheses or analyses of these data by federal and/or provincial regulatory authorities with oversight (e.g., fisheries, caribou). Attention to monitoring at a regional scale is a critical issue in Ontario's Far North given the intact nature of both terrestrial and aquatic systems, the value of those systems to First Nations and the public (e.g., ecosystem services) and the mandate for Ontario, under Ontario's *Far North Act*, to develop a regional land use strategy.

Finally, R-SEA to support environmental assessment in Canada has federal and provincial precedent and SEA practice is recognized widely internationally ([www.sea.org](http://www.sea.org)). Provincially, R-SEA has been identified as a key area of interest by the Canadian Council of Ministers of the Environment, which stated in a 2009 report: "An inherently proactive and futures oriented approach, R-SEA is a means to ensure that planning and assessment for a region support the most desired outcomes rather than the most likely ones."

***Recommendation 3. Require the proponents to conduct a sustainability assessment for the Project.***

The value of a resource like diamonds is based on both its depletion and a market that is not linked to local conditions. Market values for non-renewable resources fail to reflect the implicit environmental and cultural values in the region. As such, developments like this Project are not truly sustainable. Sustainable development expectations and assumptions for possible futures cannot be delivered by a process designed primarily to mitigate adverse effects (i.e., project-based environmental assessment).

At a minimum, the proponent should be directed in the EIS at a project level and, preferably, at a strategic level, to conduct analyses on how best to make positive contributions to sustainability. Application of the positive contribution to sustainability test includes development of explicit criteria combining the common generic requirements for progress towards sustainability with attention to the specific circumstances of the Project. For example, the Mackenzie Valley Panel evaluated the Mackenzie Valley Pipeline and alternatives based on the following sustainability criteria (Gibson 2011)<sup>5</sup>:

- the extent to which a project makes a positive overall contribution towards environmental, social, cultural, and economic sustainability.
- how the planning and design of a project address sustainable development.
- how monitoring, management and reporting systems have incorporated indicators of sustainability.
- the views of stakeholders and participants in the process.

Globally, environmental assessment expects proponents to show that their proposed projects will deliver lasting overall gains in addition to avoiding or mitigating adverse effects. Five recent review panels under *CEAA* have adopted this standard, including Voisey's Bay Nickel Mine and Mill Joint Review Panel, Kemess North Gold-Copper Mine Joint Review Panel, White Point Quarry and Marine Terminal Joint Review Panel, Mackenzie Gas Project Joint Review Panel and Lower Churchill Hydroelectric Generation Project Joint Review Panel. We think this approach is consistent with the purposes of *CEAA*, 2012 (section 4(1)b) and Ontario's *EAA* (the purpose of which is the "betterment" of the people of the province).

Finally, an important social consideration for sustainability assessment of the Project are First Nations impacted (positively and negatively) by the Project. We acknowledge that the EIS includes attention to First Nations in terms of consultation and traditional knowledge. While First Nations have expressed interest and willingness to engage in natural resource development opportunities, they face a disproportionate number of challenges in participating in these economies,

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<sup>5</sup> Gibson, R. B. 2011. Application of a contribution to sustainability test by the Joint Review Panel for the Canadian Mackenzie Gas Project. *Impact Assessment and Project Appraisal* 29:231-244.

including unresolved issues with Ontario and Federal authorities over management and consultation processes that determine how natural resources are used and by whom, property rights, and weak internal governance and institutions. Traditional livelihoods (e.g., trapping, hunting, fishing, medicines, and non-timber forest products) as well as cultural activities and values that depend on the availability and abundance of biodiversity and healthy environments are often undervalued and at risk from commercial and industrial economies. A robust approach that includes sustainability assessment would address this unique aspect of the Project.

## **Appendix 1. Information about WCS Canada**

WCS Canada ([www.wcscanada.org](http://www.wcscanada.org)) was established in May 2004 as a Canadian non-government organization with a mission to conserve wildlife and wildlands by improving our understanding of and seeking solutions to critical problems that threaten key species and large wild ecosystems throughout Canada. WCS Canada generates knowledge through research and tools for conservation of the northern boreal's fish and wildlife species and ecosystems and the services they support. WCS Canada provides this information to Government and First Nations decision-makers to create policies and governance systems that support conservation, sustainable use of biological resources, and best practices for industrial development.

Dr. Cheryl Chetkiewicz is an Associate Conservation Scientist with WCS Canada hired to support broad-scale and community-based conservation planning in the Far North, specifically wildlife research and monitoring and developing cumulative effects landscape models for northern Ontario.

Dr. Justina Ray is both the Director and Senior Scientist for WCS Canada. Dr. Ray has been engaged in field research in northern Ontario and is one of the few biologists to spend significant time in this remote region over the last decade, with a focus on wolverine and caribou. Dr. Ray serves on MNR's Provincial Caribou Technical Committee and the Ontario Wolverine Recovery team and was a member of the MNR's Far North Science Advisory Panel.

Dr. Jenni McDermid is a Fish Conservation Research Scientist with WCS Canada. Her research focuses on impacts of climate change and resource development on freshwater fish, particularly lake trout and lake sturgeon.

WCS Canada Comments on Draft EIS Guidelines for De Beers VMEP (July 4, 2013)

No.	Section		WCS Canada Comment and Recommendation
1	8.1	Assessment of alternatives for mine waste disposal	Please clarify why there are no current federal regulations specific to diamond mining given that diamond mining is subject to the requirements of the <i>Fisheries Act</i> .
2	8.1	Assessment of alternatives for mine waste disposal	WCS Canada is supportive of the need for a detailed assessment of alternatives for mine waste disposal by the proponent.
3	9.1.1	Existing Environment. Methodology.	Should include existing De Beers mine as well as advanced exploration by Metallex
4	9.1.2	Biophysical environment	<p>Include the frequency and magnitude of severe weather events e.g., flooding, wildfire in the region.</p> <p>Please define PM2.5 and PM10.</p>
5		Surficial Geology	Proponent should consider the implications of project activities <b>AND</b> climate change.
6		Water Resources	<p>Regional and local study areas should be informed by appropriate hydrological scales. A nested design, particularly for cumulative effects is warranted including secondary, tertiary, and quarternary watershed scales. We anticipate and expect that a minimum VC list would include water quality (e.g., contaminants, sediment), water quantity (e.g., flow), and freshwater fish (e.g., riverine and lacustrine indicators, subsistence, recreational, species at risk).</p> <p>Karst features should be addressed.</p>
7		Wetlands	<p>We urge CEA Agency to consider the need to address ecosystem services more explicitly besides a traditional emphasis on animal and plant communities.</p> <p>Identify all RAMSAR listed wetlands and include on the figures/maps. These should be included as VC.</p> <p>Wetlands provide important ecosystem services that are currently ignored in the EIS. Wetlands are also an important VC and recognized as a relevant component of the EIS. We also stress the need to include peatlands as a relevant component (see below).</p>
8		Fish and Fish Habitat	Existing data should be supplemented with surveys where necessary rather than rely on the listing of known fish species, particularly rare ones. EIS should direct the proponent to conduct fisheries surveys relevant to local and regional study areas as proposed for other species. We



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			<p>acknowledge that De Beers have been diligent with these surveys for Victor Diamond Mine.</p> <p>Studies conducted previously on fish and fish habitat that are submitted with the EIS should be made available for public review as well. Proponent should summarize known research by First Nations and MERC for the purpose of the EIS.</p> <p>Provincial protocols for surveys (such as Ontario Stream Assessment, Riverine Index Netting, and BROADSCALE monitoring sampling) should be considered and approved in advance by regulatory agencies and federal or provincial experts. The EIS should confirm this and/or provide relevant references for these protocols to support public review.</p>
9		Fish and Fish Habitat	<p>For all watercourses or waterbodies indicate how fish passage will be maintained for sites. EIS should specify the need to address winter roads and temporary access roads explicitly.</p>
10		Birds, Wildlife and their Habitat	<p>Naturalists will be consulted. Please also include scientific experts both within government and external to government.</p> <p>Important Bird Areas should be identified and mapped.</p> <p>Any provincial or federal protected areas or areas of special interest (ANSI) should be identified and described.</p>
11		Woodland caribou	<p>We acknowledge that De Beers track record to date and attention to caribou in particular, including almost a decade of radio-telemetry data as part of Victor mine monitoring, has contributed to our understanding of caribou in the area and helped provide a better perspective on the spatial and temporal dynamics of caribou in the region, particularly compared to most baseline studies conducted in EA. We would like to see this continue.</p> <p>We recommend that De Beers undertake an exercise to review the methodology and results to date with independent experts and seek guidance on continued monitoring. One area that warrants attention in the EIS is the implications of increased access by people and the need for access management and potential impacts on caribou (e.g., increased hunting) as the Project expands.</p>
12		Ecosystems	<p>Peatlands should be added as a relevant ecosystem given their critical role in the global carbon cycle and global significance (Ontario has the second large peatland complex in the world).</p> <p>Peatlands provide regulating ecosystem services, including climate regulation, water quantity</p>

WCS Canada Comments on Draft EIS Guidelines for De Beers VMEP (July 4, 2013)

			and quality, and erosion controls. Peatland ecosystems sequester and store carbon at rates that surpass tropical forests. Ontario's peatlands currently provide about a tenth of the globe's cooling benefit and offset as much as one third of southern Ontario's carbon emissions. As such, peatlands are important components of federal and international mitigation strategies to address greenhouse gases (GHGs) and climate change.
13	9.1.3	Human Environment	Description of current land uses should also provide the status of community land-use planning processes underway in the First Nations affected by the project under Ontario's <i>Far North Act, 2010</i> .
14	9.2	Potential or established Aboriginal and Treaty Rights	The Draft EIS should acknowledge the Federal commitment to UNDRIP.  The Canadian Government has also signed the United Nations Declaration on the Rights of Indigenous People (UNDRIP) <sup>1</sup> which includes articles on free, prior and informed consent, participation in effective decision-making, negotiation for activities that affect communities, and respecting and accounting for views and traditional and indigenous knowledge.
15		p. 25	The reasoning for the social boundaries described in this section should be clarified in the EIS. It seems fairly arbitrary that the other First Nations are listed as being further removed from the project because they aren't within some undefined spatial scope with respect to De Beer's claim units.  The federal government should also consider the extent to which traditional territories of these other First Nations are being defined, outside of reservations, and how they are being applied in land use and occupancy processes created by Ontario's land use planning processes. Mining claims pre-empt other values in current land use planning processes.
16		p. 25	Currently, the EIS scopes the impacts to Victor Diamond Mine and the watercourses being assessed under the current EIS. We recommend the proponent and EIS include a local and regional scale Social Impact Assessment (SIA) given the complex relationships between the existing Victor Diamond mine and Mushkegowuk First Nation communities as well as the non-transparent (to the public) processes behind De Beer's and First Nation Impact Benefit Agreements (IBA).  We think this will also address some of the regional aquatic impacts (e.g., contaminants in subsistence fish) that would be exacerbated by mines in the headwaters of the Attawapiskat

<sup>1</sup> <http://www.un.org/esa/socdev/unpfii/en/drip.html>

WCS Canada Comments on Draft EIS Guidelines for De Beers VMEP (July 4, 2013)

			(e.g., Ring of Fire).
17	12.1.2	Cumulative Environmental Effects	<p>Victor Diamond mine and any advanced exploration in the vicinity of the project should be included in the assessment.</p> <p>EIS should clarify whether CEA is restricted to federally relevant VCs.</p>
18	13.1.1	Significance of Adverse Effects. Methodology.	<p>We noted that the proponent is referred to guidance on CEAA website that clearly acknowledges that the guide has not been updated to reflect CEAA, 2012. It is unclear to us how this guidance will change making it difficult to comment on the draft EIS and we recommend the Agency address this limitation immediately.</p> <p>It remains unclear from the EIS whether significance is only applicable to VCs and federal responsibilities and interests.</p> <p>While the list of elements to be considered seems comprehensive, it would be helpful to require a temporal frame and weighting the impact accordingly even if qualitative and based on expert opinion. For example, the extent or proportion of the VC that will be affected by the Project within the life of mine operation. Another example relevant to magnitude for VCs related to ecosystems or ecological communities, could include destruction or degradation within extent of the Projects spatial and temporal timeframes. Reversibility should consider whether the impacts can be undone or restored within 100 years for example if the Project no longer existed.</p>