

July 18, 2024

**BY EMAIL**

The Hon. Steven Guilbeault  
Minister of Environment and Climate Change  
200 Sacré-Coeur Boulevard  
Gatineau QC K1A 0H3

Dear Minister Guilbeault:

**RE: GREAT BEAR GOLD PROJECT (“PROJECT”) – REPLY TO KINROSS/GREAT BEAR RESOURCES LTD. (“KINROSS”) ON GRASSY NARROWS FIRST NATION (“GRASSY NARROWS”) REQUEST TO REFER IMPACT ASSESSMENT OF PROJECT TO A REVIEW PANEL [REFERENCE NUMBER 85832]**

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These are the reply submissions of Grassy Narrows to the July 9, 2024 Kinross letter on the above matter. Grassy Narrows renews its request from our letter of June 17, 2024 that the impact assessment of the Project be referred to a review panel because the five reasons given by Kinross for not doing so are without merit for the following reasons:

- 1. The Kinross assertion that the impact assessment of the Project does not warrant referral to a review panel under section 36(2) of the *Impact Assessment Act* flies in the face of the facts of this case and the plain meaning of subparagraphs (a) to (d) under section 36(2):**

Grassy Narrows submits that establishing a review panel is in the public interest pursuant to subparagraph (a) of section 36. Both the: (1) extent of the effects within federal fisheries jurisdiction; and (2) the direct/incidental effects of the Project to fisheries, are adverse. This is due to the release to area bodies of water of toxic metals and acid rock drainage, as well as substances, such as sulphates, that will cause the methylation of existing toxic metals in the aquatic environment particularly, but not exclusively, mercury, arsenic, and cadmium into even more toxic forms (See Attachment 1 to this letter). These releases make this a federal jurisdictional issue both as a matter of constitutional law (section 91(12) of the *Constitution Act, 1867* respecting seacoast and inland fisheries) and as a matter of statute law (e.g., *Fisheries Act*, s. 36, deposit of deleterious substances into waters frequented by fish; and *Canadian Environmental Protection Act*, designation of various substances, such as mercury, arsenic, and cadmium as toxic under Schedule 1 of the Act).

Grassy Narrows submits that establishing a review panel is in the public interest pursuant to subparagraph (b) of section 36 because one should expect that the public will have major concerns about industrial mining activity that exacerbates toxic conditions in major bodies of water and threaten not only the integrity of the aquatic environment but also pose special threats to the health of humans consuming fish in this region. Indeed, the issue of toxic impacts on Grassy Narrows

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people from the consumption of contaminated fish, and the linked issue of mining threats to Grassy Narrows, are among the environmental issues of greatest public interest, and most news reporting in Canada today.

Grassy Narrows restates that establishing a review panel is in the public interest pursuant to subparagraph (c) of section 36 for the reasons set out in our June 17<sup>th</sup> letter to your office:

“.....if Ontario decides to designate the Great Bear Gold Project, then referral to a review panel under the *IAA* preserves the opportunity to integrate the two assessments pursuant to the joint review panel provisions of the *IAA* (section 39) and the harmonization provisions of the *EAA* (section 3.1) to ensure that risks of adverse impacts to all relevant areas of purported federal and provincial jurisdiction are assessed comprehensively in a holistic and participatory manner.

.....the Great Bear Gold Project requires various provincial permits, licences, and approvals (e.g., Permit to Take Water, Environmental Compliance Approval (Sewage), etc.,. However, none of these permits considers the Project as whole in its full context, which further illustrates the need for inter-jurisdictional coordination and cooperation between the federal and provincial governments” (pdf page 5).

Nothing in the Kinross July 9<sup>th</sup> letter derogates from this view.

Grassy Narrows submits that establishing a review panel is in the public interest pursuant to subparagraph (d) of section 36 and is discussed below under point 4.

**2. The Kinross assertion that mining activity in the Red Lake area is common, in fact underscores why there is a need to refer the impact assessment for the Project to a review panel; while the company’s assertion that the effects of the Project are well-understood is not supported judging from the significant scientific and technical gaps in its supporting documentation.**

The fact that there are many mining operations in the Red Lake area underscores the need for a cumulative impacts assessment of the effects of this Project through a Review Panel. As Dr. Brian Branfireun indicates in a July 2024 memorandum to Grassy Narrows (Attachment 2):

“By the very nature of the proposed Project (sulphate-generating mined and stockpiled materials), **cumulative increases** in sulphate concentrations in surface waters from the proposed Project (even if within regulatory limits for the protection of aquatic life) are inevitable and would increase methylmercury production in receiving waters....Sulphate addition will increase methylation, and will increase mercury in fish. Consumption advisories already exist for fish in downstream waters (e.g. Pakwash Lake). Additional sulphate will amplify this effect” (pdf page 4).

In Dr. Kevin Morin’s April 2024 report to Grassy Narrows on the Project he identified other preliminary problems with water treatment during proposed exploration and mining for the Project:

“- Kinross Gold does not expect to treat site water to non-toxic levels. Instead, treatment would only be down to still-toxic levels based on the Metal and Diamond Mine Effluent Regulations. Thus, Kinross Gold intends to rely on significant dilution of its contaminated effluent within a “mixing zone” in the Chukuni River. Such a mixing zone would include zones of significant

toxicity and would require formal authorization from Fisheries and Oceans Canada. In any case, this discharge of effluent would add to **cumulative effects**, which is a particular concern of Grassy Narrows First Nation” (See Attachment 3).

In a more recent July 2024 report on the ECA application for the Great Bear Project, Dr. Morin had the following additional findings and conclusions (See Attachment 4):

“Kinross..... have ignored concerns of Grassy Narrows First Nation, such as **cumulative impacts** of sulphate on mercury methylation. There is zero recognition in the Great Bear documents on expected concentrations of sulphate in water and dust, its contribution to methylation, and several other contaminants. Alarming, the currently proposed but ambiguous treatment system will not remove the likely elevated contaminated levels of sulphate from the contaminated site water (pdf page 10).

Other project documents indicate that the levels of at least one heavy metal in the Chukuni River already exceed guideline levels, likely due to other upstream mining activity referenced by Kinross. The levels of sulphate in the Chukuni River are also roughly four-fold greater than the reference levels from three other locations in the watershed (Wabigoon River, Eagle River, English River) suggesting that sulphate levels are also impacted by upstream Red Lake mining activity. The Ontario Ministry of Mines’ own information also indicate that there are several abandoned, un-remediated mine sites in the Red Lake area, a number of which the ministry classifies as being of high risk to human health and the environment.

Unless there is some reason to treat the Red Lake area like an environmental sacrifice zone, there is no reason that justifies failing to examine what the cumulative effects of the Project will be and essential way to assess them is through referral to a review panel.

Furthermore, the Kinross assertion that the effects of the Project are well-understood is without foundation judging from the significant scientific and technical gaps in its supporting documentation. A July 2024, a preliminary review by Dr. Rina Freed, a senior, professional environmental engineer, and other members of her firm, identified initial concerns with the provincial Environmental Compliance Approval application for the Great Bear Project including, but not limited to, the following matters:

- A failure to include a screening analysis to identify which parameters are Parameters of Potential Concern (“POPC”), a fundamental step for developing proposed effluent limits criteria and a deficiency where missing that, if not addressed, could result in numerous parameters of concern being omitted from the limits and allowed to be discharged in an unrestricted way causing significant environmental or human health effects;
- In the assessment of the Chukuni River water quality data, metal parameters in dissolved form were not considered, a deficiency which, if not addressed, could result in a risk that several effluent limits would not be protective of the uses intended, such as protection of aquatic life; ECA limits that meet protection goals and standard achievable technology should be required for dissolved copper, dissolved cadmium, and dissolved zinc;
- The proposed limits for the ECA also do not meet minimum protection goals typical for similar projects and achievable with standard technology including total copper, total lead and total nickel.

In addition, ECA limits should be required for nitrate, nitrite, sulphate, aluminum, antimony, chromium, cobalt, selenium, silver, chloride and acute lethality based on a protective approach;

- Insufficient information was available to address the risks of both acidity being generated from disturbed materials and the mitigation plan being inadequate to neutralize these materials prior to use of the proposed treatment plant;
- There was a significant lack of information that could result in increased risks due to the lack of understanding of the water quality that will be pumped from underground and, as this water represents about 80 percent of the water directed to the treatment plant, the risk if this deficiency is not addressed is that the underground water quality will differ from expectations and the treatment plant will not be able to manage the quality of influent successfully;
- A failure to prepare a geochemical characterization respecting the risk of metal leaching and acid rock drainage;
- An apparent lack of planning to manage the oxidation of acid generating materials in flooded underground workings;
- A proposed plan to place potentially acid generating (“PAG”) waste rock underground has significant risks and if PAG rock remains on the surface and becomes acidic, the mitigation plans are not sufficient and significant risks to water quality may occur;
- The ECA Application does not provide the influent water quality expected, such as whether the water is acidic, that will enter the treatment plant and without this information, it is not possible to confirm that the design of the plant will be adequate to meet the effluent limits and to be effective, the treatment plant design should be based on the expected influent concentrations;
- Design documents for water treatment were not provided (only a “design brief” was) and the expected effluent concentrations from the proposed water treatment plant were not provided and, in the experience of Dr. Freed and her colleagues, effluent approvals are not issued without influent predictions, treated effluent predictions, and design documents being submitted for such treatment plants; The water treatment plant as proposed is incapable of treating for sulphate, a key POPC linked with methylmercury generation; and
- The ECA application should have included a Best Achievable Technology Assessment because industrial effluent discharges do not have an inherent right to pollute large water bodies up to guideline levels and it is important to maintain dilution capacity and keep significant bodies of waters substantially unaltered, and in a non-degradation state; unfortunately, the approach taken in the ECA application used the back-calculation approach of pollute up to limits and failed to consider achievable technology limits.

The expert report by Professor Branfireun further identifies that the baseline studies underway and monitoring plan proposed are inadequate for reasons including the fact that key parameters such as methylmercury are omitted, and the detection limits used are inappropriate for the ecosystem. He notes that impacts from the project would not be detected until they are extreme and irreversible.

The company may believe that the effects of the project are well-understood, but the reality of what appears to be missing from the company's documentation just in respect of its provincial ECA application, suggests otherwise. Accordingly, Grassy Narrows submits that because the reality of the situation is that the effects of the Project are not well-understood, by the company's own logic, the impact assessment for the Project should be referred to a review panel.

- 3. The Kinross assertion that some local Indigenous communities support mining if their interests are met is not an argument for failing to refer the impact assessment to a review panel because it ignores the fact that the interests of the members of Grassy Narrows in the protection of their health and well-being stand to be irrevocably harmed.**

The First Nations that purport to support the project if their interests are met are located upstream, not downstream, from the Project site and the effluent discharges that will directly and negatively impact the health and well-being of the members of Grassy Narrows. The very existence of such a conflict, to the extent there is one, speaks to the need to refer the impact assessment for the Project to a review panel where these matters can be more fully, and transparently, addressed. The *Ermineskin* decision, referred to by Kinross, does not derogate from this principle. It was a case about whether to designate a project as subject to the *IAA* at all, not a case about referring a project already subject to the *IAA*, to a review panel. The views of other governments on the perceived economic benefits of this project do not in any way absolve the proponent, or the Crown, from taking reasonable care to protect Grassy Narrows from harm, and to respect Grassy Narrows' rights.

- 4. The Kinross assertion that the location, nature, and scale of the Project do not create the potential for adverse impacts that warrant appointment of a review panel is belied by the facts.**

The Kinross letter states that the various mine projects that were cited in our June 17<sup>th</sup> letter had "unique circumstances and potential impacts that are not analogous to the Great Bear Project". The Kinross letter also suggests that compared to the Great Bear Project, the mining projects we cited in our June 17<sup>th</sup> letter that led the federal government to designate them under federal impact assessment law had: (1) unique environmental conditions; (2) a larger scale and scope of construction or operation; (3) a larger operational footprint or facilities; or (4) local opposition.

Grassy Narrows submits that the Great Bear Project possesses each of the above characteristics that justify referring the impact assessment for the Project to a review panel.

#### **a. Unique Environmental Conditions**

Grassy Narrows is well recognized to be the site of one of Canada's worst cases of community poisoning from environmental toxics. The unique legacy of mercury contamination, cumulative impacts, and mercury related health conditions forms one of the most unique environmental conditions in Canada. This also means that template standards developed for other locations that lack these unique environmental conditions are not protective here where the fish-eating Indigenous population has already exceeded their lifetime safe exposure limit for mercury. These

extremely unique environmental conditions cry out for the most careful review before actions that might exacerbate the situation are considered for authorization.

Put another way, the health and well-being of the members of Grassy Narrows have been compromised by half a century of exposure to industrial-caused mercury-laced water pollution into which the applicant will introduce sulphate discharges from its mining operations that will exacerbate the existing methylmercury problem in the aquatic environment. Dr. Branfireun has clearly identified that the aquatic environment downstream of the Project, including the Chukuni and English Rivers, are highly sensitive to sulphate and conducive to mercury methylation. In short, the receiving waters for the Project flow into the most mercury-contaminated river system in Canada affecting the ecosystem and people that live there and will make the situation worse, if that is possible. In the submission of Grassy Narrows, this constitutes “unique environmental conditions” justifying referring the impact assessment for the Project to a review panel.

### **b. Scale and Scope of Construction/Operation/Footprint/Facilities**

Combining points two and three from the Kinross July 9<sup>th</sup> letter, let’s begin with the size of this mining project. According to the Kinross annual report for the period ending December 2023 the Project is comprised of **117.5** square kilometres of contiguous claims. Yet, according to the Kinross annual report for the period ending December 2022, the Project was comprised of **91** square kilometres of contiguous claims. Clearly, this is a large project that grew geographically by almost 30 percent in one year.

According to an initial summary description of the Project by the Impact Assessment Agency of Canada:

“Kinross Gold Corporation (the Proponent) is proposing the construction, operation, decommissioning and abandonment of a new open-pit and underground gold mine with an onsite metal mill, located 23 kilometres southeast of Red Lake, Ontario. As proposed, the Great Bear Gold Project (the Project) would include three open-pits and produce up to 60,000 tonnes of ore per day, while the metal mill would process up to 15,000 tonnes of ore per day. The Project would operate for about 20 years.

Features of the Project site include, but are not limited to:

- **a large mine site footprint** including three open pits, waste rock piles and a tailings management facility, predominantly within the Dixie Creek and Chukuni River watersheds;
- diesel-fired generators (less than 5MW), followed by a natural gas supply and onsite power generation and a 115 kV transmission line connected to the regional grid at Highway 105 (if capacity is available); and
- effluent discharge pipe(s) to the Chukuni River (final location to be determined)” [boldface added].

In fact, a January 2024 summary by Kinross indicates that the mine life of the Project is expected to be 25 years and could be longer depending on whether additional ore resources are discovered.

In the submission of Grassy Narrows, by any yardstick this is a large project that has the potential to punch above its weight in terms of its ability to contaminate Grassy Narrows territory. In the circumstances, therefore, these characteristics also justify referral of the impact assessment for the Project to a review panel.

### **c. Local Opposition**

Joseph B. Fobister, lead negotiator for Grassy Narrows Lands Protection Team, has made clear on more than one occasion that the position of Grassy Narrows is that the Project, “including the extensive mining of valuable ore that the company is calling ‘bulk sampling’, must be subjected to a rigorous environmental assessment”. Considering that Grassy Narrows territory is downstream from the Project site and the effluent discharges will directly and negatively impact the health and well-being of the members of Grassy Narrows, this not only constitutes “local opposition” but as per subparagraph (d) of section 36 of the *IAA* an “adverse impact” ...on the rights of Indigenous peoples of Canada” under section 35 of the *Constitution Act, 1982*. In the circumstances, this justifies referral of the impact assessment for the Project to a review panel.

#### **5. The Kinross assertion that the IAAC-led Impact Assessment is comprehensive and sufficient is not an argument that trumps the need for a referral to a review panel in this case**

If Parliament had thought that the IAAC by itself was sufficient to meet the requirements of the *IAA*, it would not have also provided the authority for referral to a review panel when circumstances warranted. In the submission of Grassy Narrows, the factors set out under section 36(2) have been met, and this Project warrants such a step.

Please feel free to contact the undersigned if you require additional information about this referral request, and we look forward to your reply.

Yours truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**

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Joseph F. Castrilli  
Counsel

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Encl. - Grassy Narrows Submissions on ECA Application – July 2024 (Attachment 1);  
- Report of Dr. Brian Branfireun, July 2024 (Attachment 2);  
- Reports of Dr. Kevin Morin, April and July 2024 (Attachments 3 and 4);

cc. Chief Rudy Turtle, Asubpeeschoseewagong Anishinabek (“ANA” or “Grassy Narrows”)

ANA Land Protection Team  
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