Canadian Environmental Law Association
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July 7, 2024

VIA ELECTRONIC MAIL & ERO REGISTRY

Ontario Ministry of the Environment, Conservation and Parks
Client Services and Permissions Branch
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RE: Great Bear Resources Ltd. ("Great Bear Resources") Proposal for Environmental Compliance Approval (sewage) ("ECA") for Industrial Sewage Treatment Works serving the Great Bear Advanced Exploration Project ("Great Bear Project" or "Project") – ERO No. 019-8718 (Comment Period May 23 – July 7, 2024).

We are co-counsel with Cavalluzzo LLP on behalf of Asubpeeschoseewagong Anishinabek ("ANA", "Grassy Narrows First Nation" or "Grassy Narrows") and, in this capacity, provide the following submissions in connection with the above matter.

Given the importance of, and complexity surrounding, a decision on the ECA and the risk to Grassy Narrows' already severely impaired health, well-being, and constitutional rights, the short 45-day timeframe for consideration of the material in support of the ECA, the failure to provide direct advanced notice to Grassy Narrows of the posting and comment period, the failure to provide any capacity support to Grassy Narrows, delays in receipt of the full ECA package, and Grassy Narrows' other unique circumstances, such as being a small tight-knit community that has experienced several recent deaths and associated mourning periods, these submissions should be viewed as preliminary in nature. Grassy Narrows reserves the right to file supplementary submissions if it obtains further information and the technical capacity to review the ECA application in more detail for a further 90-day period following July 7, 2024. In the interim, the within submissions should be considered together with the Grassy Narrows' statement on the Great Bear Project and the expert reports and related material appended to these submissions, and the information which Grassy Narrows has previously brought to the attention of MECP, including our recently filed submissions on the proposed application for a permit to take water ("PTTW") for the Project.

Furthermore, this submission on the proposed ECA should also be read in conjunction with all the previous comments, letters, and other communications sent from ANA to the Ontario government to date, including expert reports by Dr. Carignan, Dr. Podur, Dr. Mergler, Dr. Willow, Dr. Morin, and Dr. Branfireun which also are relevant to the significant water, health, mercury, and related issues arising from the Great Bear Project.

Request

By this letter, Grassy Narrows requests that the Ministry of the Environment, Conservation and Parks ("MECP" or "Ministry") reject the Great Bear Resources / Kinross Gold Corporation ("Kinross") application for an ECA for Industrial Sewage Works for the Project because:

(1) the scientific and technical documents in support of the applicants' ECA for the Project are not adequate;

(2) the Ontario red tape reduction measures that repealed provincial metal mining effluent limits and monitoring regulations and the government's rationale for the measures, have resulted in, or contributed to, the establishment of site-specific effluent limits proposed for the ECA in this case that are, or appear to be, inadequate to protect human health and the environment;

(3) there is a lack of consistency in the ECA proposal and how it was developed with MECP's *Statement of Environmental Values* ("*SEV*") pertaining to such matters as adopting an ecosystem approach, considering cumulative effects, protecting current and future generations under sustainable development principles, acting in a precautionary manner, making pollution prevention a priority, and enhancing consultation, especially in the context of potential infringement of the constitutional rights of Aboriginal people; and

(4) the past conduct of Kinross and/or its wholly owned subsidiaries in other jurisdictions. affords reasonable grounds to believe that the applicants will not engage in activities in accordance with the *Environmental Protection Act* ("*EPA*"), the *Ontario Water Resources Act* ("*OWRA*"), or regulations made under either of those Acts.

Background

According to the ERO notice:

> "The proposal is for a new Environmental Compliance Approval for Great Bear Resources Ltd. for industrial sewage treatment works serving the Great Bear Advanced Exploration Project, located at Tuzyks Road, approximately 25 kilometres southeast of the Town of Red Lake.
>
> Great Bear Resources Ltd. is proposing to undertake an advanced exploration program (AEX Program) in order to obtain additional information on known mineralized zones and to extract a bulk ore sample of up to 60,000 tonnes by underground mining methods. Extraction of bulk sample will allow for the testing of representative areas of the mineralization, continuity, mining dilution, optical sorter performance and metallurgical recoveries. The underground development and ore extraction will employ conventional drilling and blasting using explosives. No open pit mining or milling of ore will occur on site during the AEX Program and no tailings will be generated or stored as part of the AEX Program.
>
> Dewatering water from the underground, contact water (surface runoff and seepage) from the stockpiles, and surface water that comes into contact with the main AEX Program site will be collected and managed for industrial re-use (e.g., drilling water) or discharged to the receiving environment after treatment, as applicable.

> This application is for industrial sewage treatment works comprising of contact water collection ponds and an Effluent Treatment Plant. The proposed works are designed to meet Effluent Quality requirements prior to discharge to the Chukuni River via the Chukuni River Discharge Pipeline and diffuser.
>
> The Ministry may require monitoring of the industrial wastewater effluent discharge leaving the site."

Great Bear Resources is a wholly owned subsidiary of Kinross a Canada-based gold mining company with operations and projects in several countries, including the United States. Kinross acquired a 100% interest in the Great Bear Project on February 24, 2022 through its acquisition of Great Bear Resources. In various places in the applicant materials, Kinross is described as the one proposing the Great Bear Project.[1] The Project is located in the Red Lake mining district of Ontario and comprises over 117.5 square kilometres of contiguous claims.[2]

Grassy Narrows is a First Nation, whose members have aboriginal and treaty rights under section 35 of the *Constitution Act, 1982*, and the status of a "band" within the meaning of the *Indian Act*. Members of Grassy Narrows live on and off the English River 21 Reserve, which is a reserve within the meaning of the *Indian Act* located in the territory falling within Treaty No. 3 and that is land they have historically used, and continue to use, in northwest Ontario. The members of Grassy Narrows, who exercise rights enshrined in Treaty No. 3, are Anishinabe people many of whom engage in the practice of traditional Anishinabe activities, such as hunting, trapping, fishing, gathering, teaching, ceremony, and healing in their territory. These activities are central to their identity, diet, culture, spirituality, health, wellbeing, and economy.

The Kinross background material states that no facilities for the Great Bear Project will be located on or near First Nation Reserve lands, with Grassy Narrows Reserve being 77 kilometres away. However, the background material also confirms that the Project is located within Treaty No. 3 and much of the Red Lake mining district overlaps with the territory of Grassy Narrows as do the Great Bear Project mining claims.[3] Moreover, the ECA application materials note that:

> "The AEX Program main site is within the drainage area of Dixie Creek and its tributaries (Figure 2-1). Dixie Creek itself crosses the southern portion of the Property and flows into the Chukuni River to the east. The Chukuni River is the proposed receiving environment for the AEX Program….
> ….

[1] Kinross Gold Corporation, Great Bear AEX Program, Attachment 4 – Surface and Groundwater Technical Supporting Document (April 2024) pdf page 10 (Kinross described as proposing to undertake an advance exploration program at their Great Bear property). See also Kinross Gold Corporation, Annual Information Form for the Year Ended December 31, 2023 (dated March 27, 2024) at 48 (Kinross described as pursuing an advanced exploration program at Great Bear).

[2] Kinross Gold Corporation, Annual Information Form for the Year Ended December 31, 2023 (dated March 27, 2024) at 10-11, 47.

[3] Kinross Gold Corporation, Great Bear Gold Project, Detailed Project Description, Plain Language Summary (January 2024), pdf pages 26 and 31 (Figure S.5 – Land Tenure and Land Use).

> The Chukuni River discharges into Pakwash Lake [which] discharges into the English River system through the Manitou Falls generating station."[4]

Furthermore, Figure 2-2 of the ECA background material shows the flow direction of the English River from the Pakwash Lake discharges goes straight through the heart of Grassy Narrows' most heavily used areas, including the reserve lands of Grassy Narrows.[5]

Accordingly, although the Great Bear Project is not on or near the Grassy Narrows Reserve, the Project is, in fact, proposed on lands/waters that have been traditionally used - and continue to be used - by members of the Grassy Narrows community in the exercise of their Aboriginal, treaty, and inherent rights, and that are within Grassy Narrows' Interim Core Area of Interest for Mining.[6] Moreover, as noted above, Grassy Narrows is the first community downstream of the Project. The 77-kilometre distance from the Project site to the Grassy Narrows Reserve is hardly environmentally reassuring. A pulp and paper mill at Dryden, Ontario, located approximately 150 kilometres from Grassy Narrows Reserve, still ended up contaminating the river, the fish, and the community with mercury. Thus, Grassy Narrows takes no comfort in the notion that the 77-kilometre distance between its Reserve and the proposed Great Bear Project is a safeguard against environmental degradation and human health impacts. Finally, the technical materials in support of the ECA already indicate exceedance of CCME guidelines for certain parameters in the Chukuni River: "Existing arsenic concentrations in the Chukuni River (the receiving environment) are greater than available water quality guidelines".[7] Mercury in the walleye that Grassy Narrows people eat from the English River near Grassy Narrows already exceed the limit for commercial sale of fish in Canada, the limit for consumption by subsistence eaters, and the "do not consume" level for children and women under fifty years of age. Pulp mill effluent, and notably sulphate, originating from Dryden have been found to stimulate methylation and elevate mercury levels in Grassy Narrows fish in English River waters that will receive discharge from the Project. Given the historical contamination of the Grassy Narrows community and the English River by industrial activity, allowing the Great Bear Project to add more contaminants to already stressed aquatic ecosystems is highly problematic and should not be permitted.

Ontario Statutory, Regulatory, and Policy Framework

The purpose of the *OWRA* is to "provide for the conservation, protection and management of Ontario's waters and for their efficient and sustainable use, in order to promote Ontario's long-term environmental, social and economic well-being".[8] Section 53(1) of the *OWRA* states that: "…no person shall use, operate, establish, alter, extend or replace new or existing sewage works except under and in accordance with an" ECA. Section 1(1) of the *OWRA* defines an ECA to mean an approval issued under Part II.1 of the *EPA*. Section 1(1) of the *OWRA* defines "sewage" to

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[4] Kinross Gold Corporation, Great Bear AEX Program, Attachment 4 – Surface and Groundwater Technical Supporting Document (April 2024) pdf page 12.
[5] *Ibid*. at pdf page 31 (Figure 2-2 – Regional Watershed Areas).
[6] Grassy Narrows defines this core area as the territory in which mining-related activities could have direct adverse impacts on the Aboriginal, Treaty, and inherent rights of Grassy Narrows and its community members.
[7] Kinross Gold Corporation, Great Bear Project, Attachment 6 – ECA ISW – Advanced Exploration, Surface Water Monitoring Plan (April 2024) pdf page 33 (Table 3.3 – Water Quality Guidelines for Protection of Aquatic Life, Off-Site Stations).
[8] RSO 1990, c. O.40, s. 0.1.

include "drainage, storm water, commercial wastes and industrial wastes and such other matter or substance as is specified by the regulations". Section 1(1) of the *OWRA* defines "sewage works" to mean "any works for the collection, transmission, treatment, and disposal of sewage or any part of such works but does not include plumbing to which the *Building Code Act, 1992* applies". Sections 20.2(1)(5)(7) of the *EPA* state that a person may apply to the Director for approval to engage in an activity mentioned in s. 53(1) of the *OWRA*. Ontario Regulation 255/11, promulgated under the *EPA*, sets out prescribed requirements for applications for ECAs.

Effluent monitoring and effluent limits regulations for the metal mining sector under the *EPA*, which were in force from 1994 to 2021, have been repealed and have not been replaced.[9] The policy change was triggered by a 2018 government announcement on the need to cut red tape, create jobs, and reduce the regulatory burden on specific sectors, including metal mining. The government rationale for this change, which had the effect of transferring requirements from the regulations directly into individual ECAs in existence at the time, included creating "a level playing field by ensuring facilities in the same industrial sector are governed by the same legal tool (i.e., ECAs) and have the same opportunities to apply for changes to the requirements applicable to them" (emphasis added). In particular, according to the government rationale, owners of such facilities would be better able to apply for amendments to their ECAs to address changes in such matters as: (1) production processes; (2) production rates; (3) raw materials used; and (4) wastewater treatment processes, in respect of the assimilative capacity of the water body receiving the treated effluent. The regulations, according to the 2019 government ERO proposal notice, prevented such changes for a regulated facility because an ECA: (1) can only impose requirements that are in addition to or more stringent than the regulatory requirements; and (2) cannot eliminate or lessen regulatory requirements (emphasis added). Not surprisingly, the 2021 government ERO notice announcing the decision to adopt the proposal to repeal the regulations noted that comments received from regulated industries on the proposal were generally supportive of the proposed approach. However, the 2021 government ERO decision notice also indicated that non-government organizations "expressed concern that revoking the regulations would make Ontario's water bodies vulnerable to toxic pollution from industrial facilities and undermine regulatory consistency and certainty" in respect of "effluent limits for major industrial facilities that discharge into Ontario's waters".[10]

As a result of the repeal of the regulations, for a new mining facility (or advanced exploration project) Ontario now establishes effluent limits for such activities on a case-by-case basis for individual ECAs.

While the loss of the former regulations and the use of a case-by-case approach is a major concern, the Project nonetheless still requires effluent limits that: (1) are ecosystem and watershed specific to this case; (2) take into account cumulative impacts; and (3) recognize the unique circumstances of Grassy Narrows, including its constitutional rights. In particular, the effluent limits for this project must ensure that no further harm comes to Grassy Narrows people, their environment, way

[9] *Effluent Monitoring and Effluent Limits – Metal Mining Sector Regulations*, O. Reg. 560/94 (repealed, spent, or not in force since 1 July 2021).

[10] See, generally, *Proposal to transfer requirements from Ontario's industrial effluent monitoring and limits regulations into Environmental Compliance Approvals and revoke the regulations*, ERO Number 019-0773, Decision Notice (11 June 2021).

of life, and rights. The remainder of these submissions and the attached expert reports strongly suggest that this "no further harm" test has not been met by the ECA application.

The ECA Application for the Great Bear Project

As noted above, the ECA application is for industrial sewage treatment works comprising of contact water collection ponds and an effluent treatment plant. According to the ERO notice, the proposed works are designed to meet effluent quality requirements prior to discharge to the Chukuni River via the Chukuni River Discharge Pipeline and diffuser.

Background material prepared by Kinross indicates that:

> "Kinross will establish an integrated water management system for the site to manage water that comes into contact with Project facilities. The water management and treatment infrastructure developed for the advanced exploration program is expected to be re-used at the beginning of operations and may be incorporated into the water management system for the operating mine.
>
> The water management system and effluent treatment plant will be designed and operated to ensure that excess water meets all regulatory requirements and can be discharged to the environment. A preliminary site effluent discharge location has been identified on the Chukuni River, which will allow continued use of the pipeline corridor established for the advanced exploration program.
>
> Most of the industrial water needs for the Project will be met by water recycling, including within the process plant, and re-use of water returned from the tailings management facility. Freshwater needed will come from an onsite well and/or the Chukuni River."[11]

The Kinross background material variously states that: (1) an ECA is required with respect to the "Treatment system for mine water and contact water, and discharge of treated effluent to the environment;"[12] (2) "Effluent discharge to the environment will meet all federal and provincial regulatory requirements for water quality";[13] (3) "Effluent quality will meet regulatory requirements before release to environment" but "There may be a small area downstream of the discharge location (mixing zone) where water quality may not be the same as the background water quality";[14] (4) "Treated contact runoff and effluent" will be "discharged to the Chukuni River" during construction, operation, and closure phases of the Project;[15] (5) "All effluent discharged from the site will be treated if needed, to meet regulatory requirements";[16] (6) "Effluent meeting applicable criteria will be either directed to the integrated water management and treatment system,

[11] Kinross Gold Corporation, Great Bear Gold Project, Detailed Project Description, Plain Language Summary (January 2024), pdf page 19.
[12] Kinross Gold Corporation, Great Bear Gold Project, Detailed Project Description, Plain Language Summary (July 2023), pdf page 36.
[13] Kinross Gold Corporation, Great Bear Gold Project, Detailed Project Description, Plain Language Summary (July 2023), pdf page 40.
[14] Kinross Gold Corporation, Great Bear Gold Project, Detailed Project Description, Plain Language Summary (July 2023), pdf page 41.
[15] Kinross Gold Corporation, Great Bear Gold Project, Detailed Project Description, Plain Language Summary (July 2023), pdf pages 45-46.
[16] Kinross Gold Corporation, Great Bear Gold Project, Detailed Project Description, Plain Language Summary (July 2023), pdf page 47.

or potentially discharged directly to the environment if all regulatory requirements are met";[17] and (7) the effluent treatment plant and discharge pipeline established for the advanced exploration program "may" or "will" continue to be used for the proposed mine facilities.[18]

Kinross supporting technical documentation for the ECA indicates that: "Effluent discharge limits were accepted by the MECP on September 14th, 2023 (Table 1-1)".[19] The supporting technical documentation also indicates that water management features and activities include:

> "− A perimeter ditch to divert non-contact (i.e., clean) water away or around the AEX Program main site;
> − Collection and conveyance of contact water from the underground workings, mine rock stockpiles and runoff from the AEX Site Pad to the contact water collection ponds (Settling Pond, Mine Water Pond 1, Mine Water Pond 2);
> − Contact water collection ponds will be lined with either low permeable materials or membranes to minimize potential for fugitive seepage from the ponds;
> − Collected contact waters will be managed for industrial re-use (e.g., drilling water, dust suppression) or treated and discharged to the receiving environment (the Chukuni River), as applicable.
> − Contact waters will be treated and/or otherwise managed as to achieve final effluent criteria prior to discharge to the Chukuni River, with approved effluent discharge criteria presented in Table 3-1;
> − Runoff from overburden stockpiles will be collected and managed for TSS. Overburden stockpile water management includes use of the Sediment Pond to promote settling;
> − Excess water collected from the west Overburden Stockpile, or during early phase construction (prior to development of the Chukuni River Discharge Pipeline), will be either discharged at a minimum distance of not less than 50 m from the nearest waterbody, and/or treated at a mobile TSS plant and/or directed to and held at onsite contact water collection ponds".[20]

The supporting technical documentation further indicates that:

> "An Assimilative Capacity Study was completed to calculate discharge criteria to support Kinross' request for an ECA ISW for discharge to the Chukuni River.
>
> Discharge criteria represent numerical criteria defining the maximum concentration of specified parameters (e.g., nickel or zinc) allowed within effluent discharged to a receiving environment (e.g., lake or river), also referred to as end-of-pipe limits. MECP policy requires discharge criteria to be calculated based on the assimilative capacity of the receiving environment, where:

[17] Kinross Gold Corporation, Great Bear Gold Project, Detailed Project Description, Plain Language Summary (July 2023), pdf page 47.
[18] Kinross Gold Corporation, Great Bear Gold Project, Detailed Project Description, Plain Language Summary (July 2023), pdf page 16.
[19] Kinross Gold Corporation, Great Bear AEX Program, Attachment 4 – Surface and Groundwater Technical Supporting Document (April 2024) pdf pages 6 and 9 (Table 1.1 – Effluent Discharge Limits to the receiving Environment (the Chukuni River)). The parameters listed in Table 1.1 are pH, TSS, Arsenic, Copper, Lead, Nickel, Zinc, un-ionized Ammonia, and Phosphorus.
[20] *Ibid*. at pdf page 37.

− **Discharge criteria**: maximum concentrations (mg/L) of specified water quality parameters in effluent allowed to be discharged to the receiver (before it enters the Chukuni River).

− **Assimilative capacity**: measure of the ability of the receiving environment (Chukuni River) to receive and sufficiently mix effluent while still protecting the aquatic environment within the receiver; influenced by baseline flow rates (including the 7-day average, 20-year return period, low flow condition – 7Q20 condition) and existing water quality of the receiver".[21]

The supporting technical documentation also indicates that the approach for completing the assimilation capacity study included: (1) undertaking a water balance; (2) identifying parameters requiring discharge criteria; (3) modelling; and (4) calculating effluent discharge limits.[22]

Preliminary Concerns of Grassy Narrows with the ECA Application

The traditional activities of the Grassy Narrows community are and have been, under continual threat for more than half a century due to pulp and paper, logging, damming, and mining operations in and around the territory of Grassy Narrows. One aspect of that threat is the release of mercury and its transformation into methylmercury, a known human neurotoxin,[23] due to these various operations. The suffering members of the Grassy Narrows community have experienced over more than half a century is well-documented due to pulp industry discharges of mercury into the English-Wabigoon River system that have contaminated the fish and wildlife that community members eat.

Grassy Narrows has already been subjected to a level of cumulative impacts from industrial activity that exceeds any reasonable threshold and has severely impacted their health and wellbeing, rights, and way of life. In order to heal and to recover Grassy Narrows requires that the level of industrial impacts on its people, waters, and lands are lessened, not made greater. Grassy Narrows people have already exceeded their lifetime safe mercury exposure, exceeded a reasonable level of industrial impact on their rights and way of life, and cannot tolerate any additional impacts (Attachment 1 to these submissions).

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[21] *Ibid.* at pdf page 40.

[22] *Ibid*. at pdf pages 41-43.

[23] World Health Organization, Fact Sheet: *Mercury and Health* (17 March 2017) (elemental and methylmercury, the latter created when mercury is transformed by bacteria in the environment, are toxic to the central and peripheral nervous systems; toxic effects, besides those on the nervous system, include impacts on digestive and immune systems, the lungs, kidneys, skin, and eyes; humans are mainly exposed to methylmercury when they eat fish that contain the compound); United States Environmental Protection Agency, *How People are Exposed to Mercury* (15 March 2024) (microorganisms in waterbodies can change mercury into methylmercury where it builds up in fish); United States Environmental Protection Agency, *Health Effects of Exposures to Mercury* (15 March 2024) (mercury and methylmercury are neurotoxins); Government of Canada, *Mercury – Information Sheet* (3 July 2020) (mercury is a toxic substance under the *Canadian Environmental Protection Act, 1999*; mercury can be converted into methylmercury, a highly toxic compound, which affects the central nervous system and is particularly damaging to fetuses, infants, and young children, who are vulnerable due to their developing nervous systems; dietary exposure of humans to methylmercury occurs primarily through eating fish); Ontario Ministry of Health, *Mercury in Ontario* (28 June 2023) (apart from natural sources, mercury pollution is produced by human activities, such as metal mining; mercury can damage the nervous system and kidneys; humans are mainly exposed to methylmercury, the most toxic form of mercury, through consumption of fish).

The documentation in support of the ECA application not only does not appear to recognize this situation but proper interpretation of it, as set out below, leaves the very strong impression that the Project will make the existing situation infinitely worse.

Applicant Documents not Scientifically or Technically Adequate to Support Issuance of an ECA

A May 2024 study conducted for Grassy Narrows by Dr. Brian Branfireun (Attachment 2 to these submissions) illustrates how the historic mercury contamination problem in the rivers flowing through the territory of Grassy Narrows can be made worse by on-going industrial activity that discharges non-mercury compounds. The study found that industrial wastewater containing sulphate and organic matter that is currently discharged from the Dryden, Ontario mill (which mill was the original source of mercury in the 1960s and 1970s) to the Wabigoon River is making the existing methylmercury contamination problem in the river ecosystem worse than it otherwise would have been. This includes methylmercury contamination of fish traditionally eaten by members of the Grassy Narrows community.

Furthermore, a June 2024 memorandum prepared by Dr. Branfireun (Attachment 3 to these submissions) in response to the applicant's downplaying the relevance of the above study to the situation at Great Bear, emphatically refutes that assertion:

> "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. Even where absolute mercury levels are relatively lower, the availability of inorganic mercury is not limiting since the fraction that is methylated is a few percent at most. 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).

Moreover, a July 2024 report by Dr. Branfireun (Attachment 4 and incorporating reference to Attachments 5 and 6 to these submissions) directly addressing the ECA application for the Project concludes as follows:

> "The Great Bear Project's Advanced Exploration ECA ISW Application and associated documents are silent on the direct role of sulphate in the formation of methylmercury, and that sulphate release from the AEX or full mine project present the greatest risk to the local and downstream aquatic environment via the enhancement of the process that produces methylmercury:
>
> - Water quality guidelines that are associated with the protection of aquatic life are not appropriate when addressing potential impacts on methylmercury production and uptake by biota, and are not protective of fish consumers.
>
> - Despite assertions to the contrary, there is scant useful data about mercury in the proposed project area and receiving waters because the majority of the data that is available is either not data or is not usable. Usable low level mercury and methylmercury data that exists but is not discussed in the ECA ISW application reveals a landscape with very high potential for methylmercury production – a landscape that will be very sensitive to changes in

hydrology and sulphate loading. This is supported by high fish mercury level data that is deeply buried and not elaborated upon in the Application.

- Proposed monitoring for mercury and methylmercury in water and biota is insufficient to detect change and avoid impairment of downstream aquatic resources due to increased methylmercury production. Appropriate low-level analyses for mercury and methylmercury are not proposed at all stations, temporal frequency of water and fish sampling is insufficient, and guideline concentrations and trigger criteria are inappropriate.

Taken together, the existing data, water quality guidelines, effluent treatment, and proposed monitoring are not protective of biota in the waters in the project area, in the receiving Chukuni River, or further downstream with respect to methylmercury production and uptake. As a consequence, the existing data and proposed monitoring are not protective of fish consumers, including humans. Combined with the Proponent's inexplicable discounting of the Project's potential impact on methylmercury formation and uptake by biota, it is my opinion that there is a very high risk of irreversible harm to ecosystems and fish consumers if the ECA Application documents that I have reviewed are accepted" (pdf pages 15-16).

These mercury findings have significant implications for the advanced exploration activities Great Bear Resources proposes in the territory of Grassy Narrows given that these operations will produce and stockpile over 1 million tonnes of mine rock, and an unquantified amount of overburden as far as the ECA application materials are concerned,[24] but is understood to now be on the order of 400,000 tonnes of overburden. Furthermore, an April 2024 report by another expert retained by the Grassy Narrows community, Dr. Kevin Morin, who reviewed the applicant's earlier reports noted the following (Attachment 7 to these submissions):

- there will be sources of mercury from ore processing as the tailings and concentrate from the process will contain mercury, with the processing possibly even causing mercury and other elements to leach more quickly and become more mobile in the environment; and

- sulphate concentrations in the treated effluent, can increase toxic methylation of mercury and other elements like cadmium and arsenic (pdf pages 13 and 15).

Dr. Morin concluded in the cover letter to his report:

"…based on the information available at this time for the Great Bear Project, I remain concerned about the many potential environmental impacts that are not recognized and not anticipated by Kinross Gold and about the many impacts that are recognized but poorly addressed and characterized. My concerns pertain to both the proposed advanced exploration and the proposed mining" (pdf page 5).

In Dr. Morin's April 2024 report he also identified other preliminary problems with water treatment during proposed exploration and mining for the Project:

[24] Kinross Gold Corporation, Great Bear AEX Program, Attachment 5 – Sewage Works Design Brief (April 2024) pdf page 14.

"In summary for water treatment, Great Bear documents invoke water treatment as the major process that would prevent or minimize environmental impacts of proposed exploration and proposed mining. This is not literally true, because there will be fugitive contaminated water and contaminated dust leaving the site, but this fugitive contamination is ignored or not recognized in many reviewed Great Bear documents.

In any case, water treatment is the last "line of defence" between the on-site ML-ARD and contamination and the off-site impacts, and thus requires intensive study and characterization. However, at this time, water treatment for proposed exploration and proposed mining is ambiguous and contradictory among the documents. This should be expected because the input flows and input contaminant concentrations (ML-ARD) will not be known reliably for at least a few years. Nevertheless, there are serious concerns about water treatment now including the following.

> - 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.[25] 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.
>
> - Expensive and intensive treatment for ammonia, derived from blasting residues, is proposed. However, toxic levels of nitrate and nitrite, that always accompany the ammonia and which can cause eutrophication and other impacts in the Chukuni River and Dixie Creek, are completely ignored.
>
> - Sulphate concentrations in the treated effluent, which I understand can increase toxic methylation of mercury and other elements like cadmium and arsenic, are not mentioned at all.
>
> - Ultrafiltration may substantially reduce effluent concentrations for those elements not fully dissolved…..However, there are no details on this ultrafiltration in the reviewed Great Bear documents.
>
> - Mine water treatment plants remove metals and other elements from the water, by creating concentrated and toxic treatment waste commonly called "sludge", which can reach "hazardous" and "special" waste levels in some jurisdictions. Thus, treatment sludge requires the most careful and secure handling and long-term storage under contaminated-sites regulations. Spills of this sludge can result in toxic conditions in water and sediments including soils and benthic ecosystems. All the Great Bear documents I have reviewed so far are completely silent on the annual volumes, handling, storage, long-term protection, and potential environmental impacts of treatment sludge that will remain and be managed somewhere in perpetuity" (pdf pages 61-62).

[25] *Metal and Diamond Mining Effluent Regulations*, SOR/2002-222 (promulgated under the federal *Fisheries Act*, RSC 1985, c. F-14).

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:

> "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. Alarmingly, 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).
> ….
>
> The expected ML-ARD (metal leaching and acid rock drainage), geochemical source terms, on-site contamination, and resulting off-site contamination and impacts of Advanced Exploration at the Great Bear Project cannot be reliably defined for at least a year. This is because all-important testwork has not been completed. The dozens of existing errors and omissions already point to substantially more severe and extensive environmental contamination than any Great Bear document is willing to admit at this time. Great Bear documents only provide snippets and hints of the greater severity, and most of the data and information to confirm this have not been released to date by Kinross Gold and WSP.
>
> On its own, the recent overburden testing tells us the previous "guesses" and assumptions about Great Bear contamination by Kinross Gold and WSP are already seriously too low. They substantially underestimate on-site and resulting off-site contamination. It is likely the same problem with waste rock and stockpiled ore as with overburden, but Kinross Gold and WSP have not released the information and test results and this information is missing where it was supposedly included.
>
> At Great Bear, there is no reliable way to estimate environmental impacts and treated-water discharge impacts without knowing the on-site flows and chemistries. It is obvious at this time that the flows from the treatment plant, whatever they are currently estimated at, are already too low and significantly underestimated. One reason is that they do not include both contaminated runoff and contaminated seepage from the two overburden stockpiles containing hundreds of thousands of tonnes of water-contaminating overburden" (pdf page 13) (Attachment 8 to these submissions).

Consequently, Dr. Morin goes on to conclude that: (1) "the initial dilution zone (the mixing zone) in the Chukuni River will be significantly larger and more toxic than currently modelled"; and (2) this "serious issue" is "underestimated" in the ECA application documents (pdf page 13) (Attachment 8 to these submissions).

In 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 ECA 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 complete version of Dr. Freed's report will be provided to MECP under separate cover within 30 days as Attachment 9 to these submissions).

Grassy Narrows submits that MECP should take a number of points from the above expert evaluations including, but not limited to, the following:

- available baseline information that is provided in the ECA application pertaining to mercury, methylmercury and the processes associated with the formation of methylmercury in aquatic environments is inadequate, and the absence of sufficient mercury and methylmercury data to date means that there will be no baseline record for mercury and methylmercury in water to refer to prior to the beginning of the Project;

- the ECA application materials do not discuss the link between mining activity, the release of sulphate, and subsequent increases in methylmercury in sediments, water and fish;

- the primary driver of mercury impairment of downstream resources is the addition of sulphate which will enhance the methylation of mercury that is already in the system;

- there are concerning weaknesses and oversights associated with the ECA application that reveal a lack of consideration of the potential impact of the Project on methylmercury formation and uptake by biota, a failure to consider the cumulative effects of effluent discharges and, at a minimum, a lack of understanding of the environmental controls on methylmercury formation and uptake by biota;

- the above referred to oversights are of particular concern given that ultimately, receiving waters for the Project flow into the most mercury-contaminated river system in Canada affecting the ecosystem and people that live there;

- the reliance by the applicant on achieving on-site and off-site water quality that complies with water quality guidelines for the protection of aquatic life is inadequate and inappropriate when considering mercury and methylmercury in water, and methylmercury uptake by biota;

- the proposed aquatic monitoring program is wholly inadequate to detect irreparable harm due to Project-induced changes in methylmercury formation and fails to acknowledge the sensitivity of receiving waters, and the low frequency of sampling is insufficient to statistically detect change until that change is so substantial that its effects would be irreversible;

- the critically important metal leaching acid rock drainage ("ML-ARD") studies (which do not follow the required methodology) are incomplete and information from completed studies will not be available for about a year;

- important contaminants are omitted from the ML-ARD studies;

- the proposed treatment system will not remove the likely contaminated levels of sulphate from the contaminated site water that would contribute to the methylation of mercury in the aquatic environment;

- Attachment 4 to the ECA application material, dated December 2023, and its Figure 3-1 (AEX Water Management Plan) shows that the West Overburden Stockpile would directly discharge to the environment without treatment;[26]

- based on the May 2024 Final Closure Plan overburden would be contaminated and releases from it should require treatment before being permitted to be discharged to surface water;

- based on information provided to Grassy Narrows during the June 25th meeting with the Ministry of Mines and Great Bear, the contaminated overburden stockpiles will not be lined and water flowing through them will flow directly over, or into, the underlying ground;

- Attachment 5 to the ECA application material is ambiguous about the degree of water treatment needed because it lacks information on inflow concentrations, rates, and effluent concentrations;

- because on-site contamination has been underestimated by the applicant, receiving environment impacts will likely be worse than currently predicted;

- the limits being proposed for contaminants including mercury and sulphate in the receiving environment are not capable of protecting the health of humans who consume fish downstream because they are not designed to meet that objective;

[26] Kinross Gold Corporation, Great Bear AEX Program, Attachment 4 – Surface and Groundwater Technical Supporting Document (April 2024) pdf page 39 (Figure 3-1 – AEX Water Management Plan).

- there are no limits set for very important contaminants, such as methylmercury, for the receiving aquatic environment; and

- the proposed limits for contaminants in the receiving environment would allow sulphate levels to be elevated roughly 100 times above the level at which studies found methylmercury production to be elevated by industrial effluent in the English River watershed.

Overall, the findings and conclusions of Drs. Branfireun, Morin, and Freed on the adequacy of the applicant's technical supporting materials are very concerning for Grassy Narrows and should be for MECP. They underscore the overwhelming conclusion that the proposed ECA application: (1) is not technically or scientifically sound; (2) is not protective of human health and the environment; (3) is premature; and (4) should be rejected.

Red Tape Reduction Rationale for Repeal of Ontario Metal Mining Effluent Discharge Regulations is Contrary to International Law Principle of Non-Regression and Contributed to Inadequate Effluent Limits for Proposed ECA in this case

Grassy Narrows is also concerned that the Ontario red tape reduction rationale for the repeal of the provincial metal mining effluent monitoring and limits regulations is, on its face, contrary to the emerging international law principle of non-regression respecting maintaining and enhancing levels of environmental protection in domestic environmental laws. Put another way the principle, derived from international human rights law, prohibits backsliding, or weakening existing levels of environmental protection. The non-regression principle also has been adopted in domestic legislation in Canada; in particular, the 2023 amendments to the *Canadian Environmental Protection Act*.[27] The Ontario rationale for red tape reduction measures, however, raises concerns about the level of protection that can be expected for the bodies of water that will receive discharges of contaminants from the proposed Great Bear Project industrial sewage treatment works pursuant to the ECA the applicant has applied for. Moreover, the practical effect of the repeal of the Ontario regulation is that it leaves effluent discharge limits to be negotiated on a case-by-case basis.

This, of course, is precisely what occurred in this case between the applicant and the MECP long before the MECP posted the ERO notice, and long before Grassy Narrows was even informed that this decision was being made, thereby leaving local waterbodies and the Grassy Narrows community at risk from inadequate site-specific limits. The effluent discharge limits for pollutants to the river upstream of Grassy Narrows are among the most critically important aspects of this Project, and yet they were decided without notification of, consultation with, or free, prior, and informed consent from, Grassy Narrows.

Moreover, even if the proposed effluent limits purport to be more stringent than federal regulations under the *Fisheries Act*, they are far too lenient to protect humans from harm, and even more inadequate in the site-specific context of an already stressed aquatic environment, an historically vulnerable community, and in light of the purposes of the provincial *OWRA*, set out above.

[27] S.C. 2023, c. 12, clause 3(2) (adding s. 2(1)(a.3); and clause 5 (adding s. 5.1(2)(a)).

Furthermore, the government red tape reduction rationale, quite apart from being a regressive policy, is also at odds with the MECP *SEV*, discussed below.

Lack of Consistency with MECP Statement of Environmental Values

Approval of the ECA for the Project would not be consistent with the MECP *SEV* in the circumstances. The MECP *SEV* states that the MECP is committed to applying the purposes of the provincial *Environmental Bill of Rights* ("*EBR*") when decisions that might significantly affect the environment are made in the Ministry, and that it will apply principles such as:

- adopting the **ecosystem approach** to environmental protection and resource management; an approach that views the ecosystem as composed of air, land, water and living organisms, including humans, and the interactions among them;
- considering the **cumulative effects** on the environment; the interdependence of air, land, water and living organisms; and the relationships among the environment, the economy and society;
- considering the effects of its decisions on current and future generations, consistent with **sustainable development** principles;
- using a **precautionary, science-based approach** in its decision-making **to protect human health and the environment**;
- placing priority on **preventing pollution** and minimizing the creation of pollutants that can adversely affect the environment; and
- encouraging increased **transparency**, timely reporting and enhanced engagement with the public as part of environmental decision-making.[28]

The *SEV* also states that the MECP "believes that public consultation is vital to sound environmental decision-making. The Ministry will provide opportunities for an open and consultative process when making decisions that might significantly affect the environment".[29] In addition, the MECP *SEV* states that the ministry: "recognizes the value that Aboriginal peoples place on the environment. When making decisions that might significantly affect the environment, the Ministry will provide opportunities for involvement of Aboriginal peoples whose interests may be affected by such decisions so that Aboriginal interests can be appropriately considered. This commitment is not intended to alter or detract from any constitutional obligation the province may have to consult with Aboriginal peoples".[30] In this regard, and as we noted above, Kinross supporting technical documentation for the ECA indicates that: "Effluent discharge limits were accepted by the MECP on September 14th, 2023 (Table 1-1)".[31] Grassy Narrows submits that this approach whereby the effluent discharge limits proposed by Kinross were accepted by MECP ten months ago – prior to the posting of the ERO notice – without prior consultation with Grassy Narrows is inconsistent with the MECP *SEV* commitment to encouraging increased transparency,

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[28] Ministry of the Environment, Conservation and Parks, *Statement of Environmental Values* (point 3 respecting application of the *SEV*).
[29] *Ibid*. (point 6 respecting consultation).
[30] *Ibid*. (point 7 respecting consideration of Aboriginal peoples).
[31] Kinross Gold Corporation, Great Bear AEX Program, Attachment 4 – Surface and Groundwater Technical Supporting Document (April 2024) pdf pages 6 and 9 (Table 1.1 – Effluent Discharge Limits to the receiving Environment (the Chukuni River)). The parameters listed in Table 1.1 are pH, TSS, Arsenic, Copper, Lead, Nickel, Zinc, un-ionized Ammonia, and Phosphorus.

enhancing engagement with the public, and consulting with Aboriginal peoples in environmental decision-making. Moreover, it does not meet the letter or the spirit of the MECP *SEV*, particularly on water quality issues that are vital to the constitutionally protected rights of Grassy Narrows, violates those rights, and is not consistent with the United Nations Declaration on the Rights of Indigenous Peoples.

Furthermore, on the face of the Project materials for the ECA, and the concerns of Grassy Narrows and its experts in reviewing that material, summarized above and attached to these submissions, there is little evidence suggesting that the applicant has provided the technical or scientific foundation that would allow the MECP to consider, let alone apply, other *SEV* principles such as the ecosystem approach, cumulative effects, sustainable development principles, the precautionary approach, or pollution prevention measures. As the MECP is undoubtedly aware, the courts have held that *EBR* ss. 7[32] and 11[33], which address the obligation to consider and apply the *SEV* to decisions, include decisions on proposals for instruments such as an ECA.[34]

Grassy Narrows submits that the applicant's materials in support of its proposed ECA fall well short of providing the basis for MECP to consider, let alone apply, the principles set out in the *SEV*.

Past Conduct of the Applicant and/or its Wholly Owned Subsidiaries

Finally, there are serious reservations about the track record of Kinross and / or its subsidiaries that should also give MECP cause for concern sufficient to justify refusal of the ECA application. Section 20.7(2) of the *EPA* states that the Director may refuse to issue an ECA if the "past conduct" of an applicant, including a corporation or its officers and directors, affords reasonable grounds to believe that the person will not engage in activities in accordance with the *EPA*, the *OWRA*, or regulations made under either of those Acts.

While the ERO notice describes the applicant for an ECA in this case as Great Bear Resources, the application materials variously describe the applicant as: (1) Kinross:

> "Great Bear Resources Ltd. is a wholly (100%) owned subsidiary of Kinross Gold Corp. (Kinross), a Canadian-based gold and silver mining company founded in 1993… Kinross is proposing to undertake an advanced exploration program (AEX Program) at their Great Bear Property (Property), located in the Red Lake mining district…"[35]

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[32] *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28, s. 7 (Minister required to prepare an *SEV* that explains how the purposes of the *EBR* are to be applied when decisions that might significantly affect the environment are made by the Ministry).

[33] *Ibid*. s. 11 (Minister is to take every reasonable step to ensure that the Ministry *SEV* is considered whenever decisions that might significantly affect the environment are made by the Ministry).

[34] *Lafarge Canada Inc. v. Ontario (Environmental Review Tribunal)*, 2008 CanLii 30290 (Div. Ct.) paras 1, 53-61.

[35] Kinross Gold Corporation, Great Bear AEX Program, Attachment 4 – Surface and Groundwater Technical Supporting Document (April 2024) pdf page 10. See also Kinross Gold Corporation, Annual Information Form for the Year Ended December 31, 2023 (dated March 27, 2024) at 48 (Kinross described as pursuing an advanced exploration program at Great Bear).

or; (2) Great Bear Resources / Kinross, located at the headquarters address of the latter.[36]

Consequently, the equally, if not more, important track record / past conduct that MECP should consider is that of Kinross and its wholly owned subsidiaries. In this regard, the past environmental conduct of corporate entities Kinross owns that operate gold mines in other jurisdictions, such as the Buckhorn Mountain gold mine in the state of Washington, is instructive. In October 2022, a United States district court issued an order that Crown Resources, operators of the Buckhorn Mountain mine in Okanogan County, Washington violated the federal *Clean Water Act* and the company's combined federal-state discharge permit more than 3,000 times.[37] The order is known as a stipulation order because it confirms that the defendant agreed these violations occurred. Over 500 exceedances of the sulfate (sulphate) parameter, almost 900 exceedances of the nitrate and nitrite parameter, and over 1200 exceedances of the chloride parameter, were identified in the order. Though Kinross owns Crown Resources, only Crown Resources is named in the stipulation order. Nonetheless, in its 2023 annual report, issued in March 2024, Kinross acknowledges the liability of Crown, its wholly owned subsidiary: "On October 18, 2022, the Court granted a stipulated motion finding Crown liable under the CWA for certain exceedances of the Permit".[38] A copy of the order listing the over 3,000 violations stipulated to, is attached to these submissions (Attachment 10).

In the circumstances, Grassy Narrows submits that the MECP should take this information into account and refuse to issue an ECA to the applicant(s).

Summary
Considering the foregoing, including:

> (1) the scientific and technical inadequacy of the applicant's documents in support of the ECA for the Project;
>
> (2) the Ontario red tape reduction measures that repealed provincial metal mining effluent limits and monitoring regulations and the government's rationale for the measures, which have resulted in, or contributed to, the establishment of site-specific effluent limits proposed for the ECA in this case that are, or appear to be, inadequate to protect human health and the environment;
>
> (3) the lack of consistency of the ECA proposal, and how it was developed, with MECP's *SEV* pertaining to such matters as adopting an ecosystem approach, considering cumulative effects, protecting current and future generations under sustainable development principles, acting in a precautionary manner, making pollution prevention a priority, and

[36] Kinross Gold Corporation, Great Bear Project, Attachment 6 – ECA ISW – Advanced Exploration, Surface Water Monitoring Plan (April 2024) pdf pages 6-7.
[37] See John Stang, "Polluting WA gold mine broke environmental laws 3,539 times", *Cascade PBS*, (28 October 2022) (noting that Kinross has owned Crown Resources and the Buckhorn Mountain mine since 1996); and Nicholas Turner, "Federal judge rules WA gold mine violated Clean Water Act more than 3,000 times", *The Seattle Times* (20 October 2022).
[38] Kinross Gold Corporation, Annual Information Form for the Year Ended December 31, 2023 (dated March 27, 2024) at 67.

enhancing consultation, especially in the context of potential infringement of the constitutional rights of Aboriginal people; and

(4) the past conduct of Kinross and/or its wholly owned subsidiaries in other jurisdictions,

Grassy Narrows submits that the Great Bear Resources / Kinross application for issuance by MECP of an ECA for the Great Bear Project is premature, not otherwise warranted, and should be refused.

In light of the foregoing review, issuance of the proposed ECA for the Great Bear Project could also be properly characterized as unreasonable and could result in significant environmental harm. Because there has been inadequate identification and evaluation of the direct, indirect, and cumulative effects of effluent discharges on the environment associated with the issuance of the requested ECA, ANA's Aboriginal, treaty, and inherent rights would also be jeopardized. Accordingly, ANA submits that the MECP Director should refuse to issue the ECA unless and until the above-noted flaws, deficiencies, and shortcomings are satisfactorily remedied, and ANA's constitutional rights properly recognized and protected.

Yours truly,
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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Encl. - Letter from Joseph B. Fobister, Lead Negotiator, Grassy Narrows Lands Protection Team, July 2024 (Attachment 1);
- Reports of Dr. Brian Branfireun – May, June, and July 2024 (Attachments 2 to 4);
- Reports of Dr. Kevin Morin – April and July 2024 (Attachments 7 and 8);
- Report of Dr. Rina Freed – 2024 (Not filed but reserved as Attachment 9);
- Canadian Water Quality Guidelines for the Protection of Aquatic Life – Mercury, 2003 (Attachment 5);
- British Columbia Ministry of Environment, Ambient Water Quality Guidelines for Sulphate, Technical Appendix Update, April 2013 (Attachment 6);
- United States District Court, Eastern District of Washington, Stipulation Order – October 2022 (Attachment 10)

cc. Lands Protection Team
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