

February 21, 2025

**VIA ELECTRONIC MAIL & ERO REGISTRY**

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**RE: Great Bear Resources Ltd. (“GBR” or “Kinross/GBR”) Proposal for a Permit to Take Water (“PTTW”) – ERO No. 025-0078, MECP Reference No. 0788-DCXP8C (Comment Period January 23 – February 22, 2025) – Preliminary Comments of Grassy Narrows First Nation**

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 preliminary comments in connection with the above matter.

**I. Introduction**

Although written to the environment minister in connection with the “scoped PTTW” approved by the Ministry of the Environment, Conservation and Parks (“MECP” or “Ministry”) on December 20, 2024, the following statement of Joseph B. Fobister, Lead Negotiator, Grassy Narrows Lands Protection Team, also captures the problems posed for Grassy Narrows concerning the new PTTW application / proposal posted on the ERO on January 23, 2025:

“Kinross says that they should be allowed to carry out substantial industrial activity in areas that we rely on, and upstream from us, which our experts say is dangerous, because if any problems come up then they can fix it and clean up the mess. But we, the people of Grassy Narrows, know far too well that once industrial impacts happen, these impacts are identified late, are hard to clean up, if clean up happens it is too slow, and impact the environment and our people terribly for many generations.

Grassy Narrows has already suffered far too much from the cumulative impacts of industry that has had terrible consequences for our lands, waters, and people. The mercury that was dumped in our river decades ago is still there. The sulfate that stimulates methylation is still being discharged into our River. Our people are sick, our fish are unsafe to eat, the animals we rely on are scarce, our medicines are tainted, and our sacred landscape is desecrated. This harm has gone too far, and we cannot bear any more”.<sup>1</sup>

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<sup>1</sup> Letter from Joseph B. Fobister, Lead Negotiator, Grassy Narrows Lands Protection Team to the Honourable Andrea Khanjin, Minister of the Environment, Conservation and Parks, Comments on Great Bear Gold Project: Application for Approval of Permit to Take Water (January 13, 2025) at PDF page 2 (Attachment 1).

## II. MECP Should Reject the New PTTW Application

On the basis of our preliminary review of the application material, the new PTTW proposal poses substantially the same, if not greater, risks to the health, environment, well-being, and constitutional rights of the ANA community as both the initial PTTW not proceeded with, and the subsequent “scoped” PTTW, with respect to which we have previously apprised the MECP. Accordingly, the new PTTW application should not be approved.

## III. Procedural Observations and Requests

Given the importance of, and complexity surrounding, a decision on this new PTTW and the risk to Grassy Narrows’ already severely impaired health, environment, well-being, and constitutional rights, we make the following procedural observations and requests:

First, the within comments are preliminary in nature because of the need for review by Grassy Narrows’ experts of the documents in support of this new GBR PTTW application.

Second, on January 23, 2025, a notice was posted on the ERO respecting a new PTTW application by GBR. It would appear somewhat hasty, if not highly unusual, considering that we were still in the middle of the leave to appeal hearing process respecting the “scoped PTTW” (which did not end until February 3<sup>rd</sup>), for an ERO notice to be posted and comment period commenced for a new PTTW. We also note that the new PTTW application was signed by a representative of GBR on January 27, 2025<sup>2</sup>, yet the ERO notice and comment period commenced on January 23, 2025, five days before the application had been formally signed and submitted to the MECP. Furthermore, despite the January 23, 2025 commencement of the comment period for this new PTTW application, we only received the application and supporting material from the MECP late in the afternoon of February 12, 2025; 10 days before the ERO public comment period deadline of February 22<sup>nd</sup>. We understand from MECP via a February 12, 2025 email that the Ministry will accept comments if they are brought to its attention by April 14, 2025. However, the ERO posted comment deadline of February 22<sup>nd</sup> has not been changed.

Third, Grassy Narrows expressly reserves the right to file further supplementary comments and reports after the close of the February 22<sup>nd</sup> public comment period and, if necessary, beyond the extended April 14<sup>th</sup> deadline for the following reasons: (1) the delay in our receipt of the GBR material (i.e., only received after more than two-thirds of the 30-day comment period had expired); (2) the voluminous nature of the GBR material (over 1,200 pages); and (3) the fact that Grassy Narrows has yet to be provided with copies of either the draft PTTW or the draft industrial sewage works environmental compliance approval (“ISW ECA”), the latter a likely integral part of understanding the adequacy of the former based on our experience with the “scoped PTTW” cross-referencing and relying on the measures contained in the mobile treatment unit (“MTU”) ECA.

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<sup>2</sup> Great Bear Resources Ltd., Application for Permit to Take Water (January 27, 2025), PDF page 16.

Fourth, with these comments, we are specifically requesting that we be provided with copies of both the draft PTTW and draft ISW ECA that are currently under consideration by the MECP as soon as possible so that our comments, supplementary comments, and reports can take both proposed instruments into account for the purpose of fully evaluating the adequacy of the new PTTW proposal.

#### **IV. Overview of PTTW Proposal**

The ERO notice states that the proposal for a new PTTW for GBR consists of water to be “taken from six wells for various purposes related to the Advanced Exploration Program, located in the unorganized townships of Faulkenham Lake, South of Byshe, Dixie Lake and Bruce Lake, Ontario”.

The ERO notice also sets out the details of the new water taking as follows:

“Permit type – New

**Source name: AEX underground**

**Purpose: dewatering - underground development/bulk sample**

- maximum rate per minute (litres): 1,388.9
- maximum number of hours of taking per day: 24
- maximum volume per day (litres): 2,000,000
- maximum number of days of taking per year: 365
- earliest calendar date of taking (mm/dd): 01/01
- latest calendar date of taking (mm/dd): 12/31
- period of taking: five years

**Source name: AEX potable well**

**Purpose: water supply - AEX camp potable water**

- maximum rate per minute (litres): 20.9
- maximum number of hours of taking per day: 24
- maximum volume per day (litres): 30,000
- maximum number of days of taking per year: 365
- earliest calendar date of taking (mm/dd): 01/01
- latest calendar date of taking (mm/dd): 12/31
- period of taking: five years

**Source name: AEX supplementation well one**

Purpose: miscellaneous - flow supplementation

- maximum rate per minute (litres): 86.8
- maximum number of hours of taking per day: 24
- maximum volume per day (litres): 125,000
- maximum number of days of taking per year: 365
- earliest calendar date of taking (mm/dd): 01/01
- latest calendar date of taking (mm/dd): 12/31
- period of taking: five years

**Source name: AEX supplementation well two**

Purpose: miscellaneous - flow supplementation

- maximum rate per minute (litres): 86.8
- maximum number of hours of taking per day: 24
- maximum volume per day (litres): 125,000
- maximum number of days of taking per year: 365
- earliest calendar date of taking (mm/dd): 01/01
- latest calendar date of taking (mm/dd): 12/31
- period of taking: five years

**Source name: AEX supplementation Well three**

Purpose: miscellaneous - flow supplementation

- maximum rate per minute (litres): 86.8
- maximum number of hours of taking per day: 24
- maximum volume per day (litres): 125,000
- maximum number of days of taking per year: 365
- earliest calendar date of taking (mm/dd): 01/01
- latest calendar date of taking (mm/dd): 12/31
- period of taking: five years

**Source name: water treatment pond uplift protection system**

Purpose: industrial - operation of treatment ponds

- maximum rate per minute (litres): 104.2
- maximum number of hours of taking per day: 24
- maximum volume per day (litres): 150,000
- maximum number of days of taking per year: 365
- earliest calendar date of taking (mm/dd): 01/01
- latest calendar date of taking (mm/dd): 12/31
- period of taking: five years”.

The ERO notice also indicates that the proposed water taking qualifies as a Category 3 permit. Category 3 water takings, according to the ERO notice, are “anticipated to have the highest potential of causing unacceptable environmental impact or interference”.

**V. Preliminary ANA Concerns with New PTTW Application**

There are a number of preliminary concerns with the new PTTW application summarized below.

**A. Data in New PTTW Application Fails to Resolve Problems ANA Experts Previously Identified**

The supporting material for the new GBR PTTW application indicates that it contains new or updated data respecting such matters as groundwater levels and quality, streamflow, groundwater modelling, monitoring, and trigger plan information, as well as geological and bedrock topographical mapping, among other matters.<sup>3</sup>

However, the attempt to collect, analyze and submit this new or updated information, presumably to fill in identified gaps in previously submitted PTTW documentation, does not join issue with ANA experts’ fundamental concerns, which remain outstanding and unaddressed. For example, ANA expert Dr. Kevin Morin has repeatedly raised the issue of metal leaching-acid rock drainage (“ML-ARD”) expected from this project, including from the “simple act of pumping water”:

“the minimal ML-ARD information (‘snippets’) released to date for the Great Bear Project has shown the simple act of pumping water can activate ML-ARD at the Great Bear Project. This will cause environmental damage until it can be brought under control and could require such controls for at least many decades to centuries. ... the proposed water-treatment system will not stop this”.<sup>4</sup>

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<sup>3</sup> Great Bear Resources Ltd., Great Bear Advanced Exploration Program: Permit to Take Water Application for Underground Dewatering (January 2025), at PDF page 7.

<sup>4</sup> Dr. Kevin A. Morin, Minesite Drainage Assessment Group, Great Bear Mining Project – Technical and Environmental Comments on Respondent Submissions to Ontario Land Tribunal (January 29, 2025) at page 2

Despite the significance of the ML-ARD problem, expressed by Dr. Morin as recently as January 29, 2025 in his reply report concerning the “scoped PTTW”, there is no new information on this issue in the over 1,200 pages of the supporting material for GBR’s new PTTW application. In the entire 1,200 plus pages there is only a single reference to an October 2023 memo sent to Grassy Narrows on this issue,<sup>5</sup> notwithstanding Dr. Morin’s subsequent reports stating clearly and describing why the ML-ARD problem has not been solved by GBR.

Similarly, ANA expert Dr. Brian Branfireun has, in several reports, identified the potential for the project to trigger methylmercury production through the release of sulphates in receiving waters and cumulatively contributing to what is already a “mercury impaired ecosystem”.<sup>6</sup> Despite all of this analysis provided by Dr. Branfireun, the new GBR PTTW material has nothing to say about this issue or how it would be preventively addressed so as to avoid the consequences of new methylmercury production from sulphate release to area water bodies.

## **B. Massive Total Volume of Takings Proposed in New PTTW Application**

The new PTTW application proposes water-takings in the total maximum amount of over 2.5 million litres/day. By far, the largest taking (2 million litres/day) is for underground dewatering/bulk sampling.<sup>7</sup> This 2.5 million litres/day maximum is approximately 2 times larger than the maximum daily limit under the one-year scoped PTTW and, if approved, would be authorized to occur every hour of the day, every day of the year, for the next 5 years. By our calculations, this translates into a combined 5-year total taking of over 4.5 billion litres of groundwater. This is a massive amount by any objective standard, assuming that the maximum (or close to it) is taken by GBR over the lifespan of the new permit. In the submission of ANA, a decision to approve such enormous water takings would not be a sustainable, precautionary, or ecosystem-protective approach to decision-making and should not be made.

## **C. Impact Implications of Potential Overlapping Takings from New and Scoped PTTWs**

In conjunction with the enormity of the proposed new water takings is the question of the takings associated with the scoped PTTW and the timing and impact of the two respective takings taken

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(Attachment 2). See also Dr. Kevin A. Morin, Review of Kinross Gold Responses to Grassy Narrows First Nation Concerns for Advanced Exploration, Concerning Metal Leaching, Acid Rock Drainage (ML-ARD), On-Site Contamination of Water, Fugitive Dust, and Hydrogeology in the ECA, PTTW, and Closure Plan Responses. Report for Grassy Narrows Lands Protection Team (September 5, 2024) (Attachment 3).

<sup>5</sup> Great Bear Resources Ltd., Great Bear Advanced Exploration Program: Permit to Take Water Application for Underground Dewatering (January 2025), PDF page 1099 (reference to GBR October 2023 memo to Grassy Narrows).

<sup>6</sup> Dr. Brian Branfireun, Reply Report on PTTW Leave to Appeal Application (January 31, 2025), PDF page 1 (Attachment 4). See also Dr. Brian Branfireun, Technical Report (October 7, 2024) (Attachment 5); Dr. Brian Branfireun, Technical Report (July 5, 2024) (Attachment 6); Dr. Brian Branfireun, Reply Memo on Riverbank Mercury Methylation Study (June 27, 2024) (Attachment 7); and Dr. Brian Branfireun, Technical Report: Riverbank Mercury Methylation Study (May 14, 2024) (Attachment 8).

<sup>7</sup> Great Bear Resources Ltd., Great Bear Advanced Exploration Program: Permit to Take Water Application for Underground Dewatering (January 2025), PDF page 9 (Table 1-1: Requested Water Takings – maximum daily taking 2.555 million litres per day).

together. The GBR material states that: “There is an existing PTTW for surface and groundwater takings required during early phase construction activities for the AEX Program (PTTW #3438-D7RQJT, issued December 2024)”.<sup>8</sup> GBR fails to mention in its materials that this “scoped PTTW” is the subject of an application for leave to appeal by Grassy Narrows, which application is currently before the Ontario Land Tribunal (“OLT”). This scoped PTTW is intended to be for one year. But the question is whether the takings proposed under the new application are in addition to the takings and releases authorized under the one-year permit? Answering that question introduces concerns about additive or cumulative effects that do not appear to be addressed in the new PTTW application materials. For example, if the leave to appeal application is not granted by the OLT, the one-year scoped PTTW will remain in effect until December 2025. It is also possible that it could be extended or renewed. This would mean that the one-year-scoped PTTW could still be in effect and operative when the water takings at the six new wells under the proposed new PTTW commence on August 1, 2025, as proposed under the GBR application.<sup>9</sup>

Alternatively, if the leave to appeal application is granted this would trigger an appeal hearing on the merits. If at the end of that hearing the appeal is denied, the one-year scoped PTTW will remain in effect until December 2025 or could be extended or renewed. This too would mean that the one-year-scoped PTTW could still be in effect and operative when the water takings at the six new wells under the proposed new PTTW commence on August 1, 2025, as proposed under the GBR application. In short, under either scenario, there would appear to be the potential for both permits to be operating at the same time for a year or more and there does not appear to be an analysis of the additive or cumulative effects of the combined takings in those circumstances.

The GBR discussion of the simulation modelling it performed is not clear when it discusses cumulative effects as to whether it is just talking about the cumulative effects associated with the six wells proposed for the new PTTW, or whether it also includes the cumulative effects of the water takings associated with the scoped PTTW whose operation may overlap in time with the new PTTW, if issued.<sup>10</sup>

#### **D. New PTTW Application’s Continued Reliance on the ECAs Will Not Resolve Methylmercury Formation Problem from Sulphate Release / Inadequate Treatment**

Section 3.3 of the new GBR PTTW application material describes the proposed water management system, which appears to depend on a combination of the ISW ECA (if issued), sedimentation ponds, the MTU ECA, and related measures, all of which seem focused on removal of Total Suspended Solids (“TSS”),<sup>11</sup> not sulphates. These deficiencies in both the ISW ECA and the MTU

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<sup>8</sup> Great Bear Resources Ltd., Great Bear Advanced Exploration Program: Permit to Take Water Application for Underground Dewatering (January 2025), PDF page 8.

<sup>9</sup> Great Bear Resources Ltd., Application for Permit to Take Water (January 27, 2025), PDF pages 6-10.

<sup>10</sup> Great Bear Resources Ltd., Great Bear Advanced Exploration Program: Permit to Take Water Application for Underground Dewatering (January 2025), PDF pages 29, 161, 171.

<sup>11</sup> Great Bear Resources Ltd., Great Bear Advanced Exploration Program: Permit to Take Water Application for Underground Dewatering (January 2025), PDF page 24 (noting, for example, that additional details regarding the sewage works and industrial water treatment process is provided in the ISW ECA application, provided to the MECP April 12, 2024).

ECA call for a preventive approach respecting return water quality under s. 34.1(9) and (10) of the *Ontario Water Resources Act* (“OWRA”) failing which the new PTTW application should be denied as it will not protect the environment, health, well-being, and constitutional rights of ANA.

ANA has repeatedly made clear that GBR’s approach is highly problematic and quite simply inadequate.

### **1. Problems Identified with the ISW ECA Application**

As noted above, the new GBR PTTW January 2025 application material continues to rely on the company’s April 2024 ISW ECA application material as a basis for obtaining an ISW ECA to control discharges arising from the water to be taken under the authority of the PTTW. Below, ANA summarizes some of the problems with the ECA material. For example, Dr. Kevin Morin’s July 2024 expert report for ANA made the following observations concerning the adequacy of the ISW ECA application, particularly as it relates to the issue of sulphate release and treatment:

- critically important ML-ARD information for on-site environmental contamination, which in turn leads to many off-site environmental impacts, is not available which means that off-site environmental impacts including heavy metals and sulphate cannot be reliably estimated at this time and are likely significantly underestimated;
- the critical issue to Grassy Narrows First Nation of sulphate in water, likely to be in the many hundreds of mg/L from the Great Bear site with no proposed treatment for sulphate, remains ignored. Thus, sulphate’s effect on increased methylation of mercury in Great Bear effluents remains ignored;
- the currently proposed treatment system will not remove sulphate from the contaminated site water and there is no discussion of a treated-discharge limit for sulphate from the Great Bear site, but a technically and environmentally justified discharge limit is needed;
- 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. Therefore, the initial dilution zone (the mixing zone) in the Chukuni River will be significantly larger and more toxic than currently modelled. This serious issue is underestimated in the ECA application documents. Critical information, including likely very high concentrations of sulphate, has not been released to estimate how much larger and more toxic the initial dilution zone will be.<sup>12</sup>

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<sup>12</sup> Dr. Kevin A. Morin, Great Bear Mining Project – Review of the ECA Application Documents for Advanced Exploration (July 6, 2024), PDF pages 7-8, 10, 13 (Attachment 9).

In Dr. Morin's September 2024 expert report, he noted that the GBR predicted concentrations for sulphate of potentially up to 1,000 mg/L or more:

- were not reliable and not supported by any analytical data and test results provided by GBR/Kinross;
- did not include the major contaminant release confirmed from overburden by a federal-Manual-recommended procedure; and
- were unrealistically low for the average sulphide levels (0.2%S) in Great Bear rock of 2,000 tonnes of acid-generating sulphur and 63,000 tonnes of acidity as kg CaCO<sub>3</sub> equivalent/tonne for one million tonnes of waste rock, which can contaminate millions of liters of Great Bear water.<sup>13</sup>

The professional opinion of Dr. Branfireun in his October 2024 expert report was that: "there is a very high risk of irreversible harm to ecosystems and fish consumers if the AEX work proceeds and the ECA Application documents that [he has] reviewed are accepted". His concerns include the failure of the Kinross/GBR August 1, 2024 response to address properly, or at all, the following matters:

- protection of fish consumers from increased methylmercury concentrations in fish arising from Kinross/GBR proposed operations;
- the vast majority of the background mercury data presented by Kinross/GBR is not valid, nor is the majority of the company's future monitoring plans;
- the lack of sufficient monitoring by Kinross/GBR to prevent irreparable harm; and
- mercury methylation in downstream receiving waters will be impacted by sulphate releases from the company's proposed activities because:
  - Chukuni River volumetric discharge data is incorrectly handled by Kinross;
  - Kinross/GBR Chukuni River sulphate data are technically flawed;
  - Effluent discharge sulphate concentrations are likely to be much higher than stated by Kinross/GBR;
  - Effluent sulphate loads will raise concentrations in the Chukuni River and downstream receiving waters.<sup>14</sup>

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<sup>13</sup> Dr. Kevin A. Morin, Review of Kinross Gold Responses to Grassy Narrows First Nation Concerns for Advanced Exploration, Concerning Metal Leaching, Acid Rock Drainage (ML-ARD), On-Site Contamination of Water, Fugitive Dust, and Hydrogeology in the ECA, PTTW, and Closure Plan Responses. Report for Grassy Narrows Lands Protection Team (September 5, 2024) PDF page 45 (Attachment 3).

<sup>14</sup> Dr. Brian Branfireun, Technical Report (October 7, 2024) PDF pages 1-16 (Attachment 5).

As a result of his analysis, including the use of correct data and appropriate flow statistics, Dr. Branfireun concluded that: "...it is clear that effluent sulphate loading would result in measurable changes in Chukuni River sulphate concentration". Furthermore, it was the opinion of Dr. Branfireun that he would expect elevated sulphate concentrations would directly enhance mercury methylation in downstream receiving waters, increasing methylmercury delivery to biota, and increasing mercury concentrations in fish presenting an increased risk to fish consumers because:

- (1) "no treatment strategy is in place to reduce sulphate in effluent discharge waters and both effluent discharge volumes and sulphate concentrations could be much higher than the scenarios presented by [Kinross] resulting in river sulphate concentrations many times higher than background for substantial portions of the year";
- (2) "lower flow conditions are typical in the warmer summer months and may occur with increasing frequency in the future"; and
- (3) "There is evidence that [the] Chukuni River has sulphate concentrations that are higher than the regional background as a result of existing mining activity – further inputs will cumulatively add to these already elevated levels, and have cumulative effects on mercury methylation in downstream receiving waters because the amount of methylmercury produced is positively related to sulphate concentrations".<sup>15</sup>

The September 2024 expert report of Dr. Rina Freed on behalf of ANA found that:

- GBR's "proposed effluent discharge limits are not comprehensive" with minimum protection levels missing for substances like sulphates;
- applicable Water Quality Guidelines ("WQGs") for sulphate, mercury, and methylmercury indicate orders of magnitude higher values than the Chukuni baseline water quality and that as a result, effluent limits based solely on the WQGs would not be effective. Protective site-specific limits should be developed taking into account the risks posed by methylation and cumulative impacts; and
- Sulphate is of concern as current levels in the receiving environment are low and even slight increases have a risk of elevating methylmercury in the near-field and far-field environment.<sup>16</sup>

The foregoing indicates there are a host of unresolved scientific and technical problems with the Kinross/GBR ISW ECA application and supporting material, including missing, and inadequate information of a critical nature, which makes it statutorily and constitutionally premature, at best, for the company to rely on it or for MECP to be considering an approval for the new PTTW based

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<sup>15</sup> Dr. Brian Branfireun, Technical Report (October 7, 2024) PDF page 15 (Attachment 5).

<sup>16</sup> Dr. Rina Freed, Source Environmental Consultants Inc., Review of Great Bear Advanced Exploration Program ECA ISW Application (September 5, 2024), contained in larger ANA submission, at PDF pages 19-22 (Attachment 10).

on it. Most importantly, in such circumstances, approval would put the environment, health, way of life, and constitutional rights of Grassy Narrows at risk of further irreparable harm.

## 2. Problems Identified with the MTU ECA

ANA has also identified problems with GBR reliance on the MTU ECA as a water management instrument to be used in conjunction with the scoped PTTW and possibly the new PTTW as it relates to the issue of sulphate release. For example, the MECP Director’s own evidence in the hearing respecting ANA’s application for leave to appeal the scoped PTTW shows that: (1) the “MTU does not treat sulphate, which could be a concern should discharge and overland runoff water reach nearby surface water features, one being Dixie Creek, which eventually flows to the English River”;<sup>17</sup> and (2) there are no effluent limits for sulphate in the MTU ECA.<sup>18</sup> The expert reports of Drs. Branfireun<sup>19</sup> and Freed<sup>20</sup>, respectively, reach the same conclusions.

## 3. No Indication of a Preventive Approach to Protecting Return Water Quality

The deficiencies in both the ISW ECA and the MTU ECA call for the application of a preventive approach respecting return water quality under s. 34.1(9) and (10) of the *Ontario Water Resources Act* (“OWRA”) and regulations failing which it would appear that the new PTTW application could cause significant environmental harm, and issuance of a permit in the circumstances would be unreasonable. There does not appear to be a preventive return water quality strategy in the new PTTW application material, underscoring the PTTW’s reliance on the ISW ECA and MTU ECA.

### E. New PTTW Application Unpersuasive on Whether Streamflow in Dixie Creek and Other Watercourses Will Be Adversely Impacted

Section 5.2.1 of the new GBR PTTW application material acknowledges that parts of Dixie Creek (and other watercourses) are predicted to be within the Zone of Influence (“ZOI”) of the underground dewatering. For example, the GBR material states that: (1) “The results of the flow budget analysis shows that during AEX Program operations, Dixie Creek experiences an overall reduction in baseflow contribution”; and (2) the effects of AEX development are focused “almost entirely” between 4,000 and 8,000 m [i.e., 2.5 to 5.0 miles] along Dixie Creek.<sup>21</sup>

ANA submits that these are serious effects in and of themselves and they will last for at least five years during the AEX program, recognizing that there is also the prospect of further, larger, and

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<sup>17</sup> Affidavit of Jacinth Gilliam-Price, Director’s Book of Documents (“DBOD”), Tab 3, paras 33-34 (MTU does not treat sulphate).

<sup>18</sup> Vertex Environmental Compliance Approval No. 6029-CSLP6C (June 23, 2023), DBOD, Tab 5, s. 9 (sulphate not listed in any of the tables of effluent limits).

<sup>19</sup> Dr. Brian Branfireun, Reply Report on PTTW Leave to Appeal Application (January 31, 2025), PDF pages 1-2 (Attachment 4) (referring to Vertex Environmental Compliance Approval No. 6029-CSLP6C (26 June 2023), DBOD, Tab 5, s. 9).

<sup>20</sup> Dr. Rina Freed, Source Environmental Consultants Inc., Great Bear – Comments on the ANA’s Leave to Appeal on the Scoped Permit to Take Water Application for Dewatering (January 31, 2025), PDF pages 4-5 (Attachment 11).

<sup>21</sup> Great Bear Resources Ltd., Great Bear Advanced Exploration Program: Permit to Take Water Application for Underground Dewatering (January 2025), PDF pages 28-29.

longer impacts due to a full-blown mining operation looming in the background, if one is ever approved. However, the GBR material relies on various unconvincing reasons why adverse impacts from streamflow reductions due to the AEX project will not be significant compared to other current influences (e.g., beaver dams). Indeed, the GBR material frequently seeks to shelter behind the existing impacts of beavers as a defense of the company's water takings.<sup>22</sup>

ANA is concerned that taking water from Dixie Creek risks harming the fish and other life that live in Dixie Creek by leaving them with too little water, warm water, or unsafe water. This is especially risky during droughts which are becoming more and more frequent as the climate changes. ANA is also concerned that the studies that are being used to understand the natural conditions in this area, including flows and water quality in Dixie Creek and in groundwater, have frequently lacked adequate information making it nearly impossible to tell if the water takings will impact water flow and quality. Even this latest GBR material admits that future monitoring will be necessary to confirm whether its latest model predictions are accurate.<sup>23</sup>

In the view of ANA, the GBR argument that the water takings from one of the largest proposed advanced exploration / mining operations in Canada will have little more impact on streamflow than beavers do, does not pass the giggle test.

**F. Extensive Measures Necessary to Protect Fish and Fish Habitat Under Federal Law from Water Taking Raises Questions Respecting Ability of GBR to Protect ANA Constitutionally Protected Rights**

As a member of Treaty 3, Grassy Narrows has a constitutionally protected right to adherence by the Crown respecting their right to fish. In this regard, ANA notes that the concerns of the federal Department of Fisheries and Oceans (“DFO”) respecting potential impacts of the water taking on fish and fish habitat under the *Fisheries Act* necessitated the department listing approximately 30 different measures to be taken by GBR, including compliance with five different department codes of practice, in order for the company to avoid the necessity of obtaining an authorization under that Act.<sup>24</sup> ANA submits that the need for such an enormous number of measures does not instill the community with confidence that the water taking will not result in harm to both fish and fish habitat in violation of both federal law and their constitutional rights.

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<sup>22</sup> Great Bear Resources Ltd., Great Bear Advanced Exploration Program: Permit to Take Water Application for Underground Dewatering (January 2025), PDF pages 29, 37, 76.

<sup>23</sup> Great Bear Resources Ltd., Great Bear Advanced Exploration Program: Permit to Take Water Application for Underground Dewatering (January 2025), PDF page 29.

<sup>24</sup> Great Bear Resources Ltd., Great Bear Advanced Exploration Program: Permit to Take Water Application for Underground Dewatering (January 2025), Attachment D – Letter of Advice from DFO re Implementation of Measures to Avoid and Mitigate the Potential for Prohibited Effects on Fish and Fish Habitat (27 March 2024), PDF pages 787-791.

### **G. There Has Been No, Let Alone “Extensive”, Consultation Regarding the New PTTW Application**

The GBR application states that: “Extensive consultation has occurred in regards to this Application...”.<sup>25</sup>

In fact, as regards the January 2025 GBR PTTW application, there has been no consultation.

In respect of earlier and different iterations of proposed water taking permits, ANA submits that the following list more accurately describes the situation as it relates to MECP and / or GBR as the case may be:

- delayed disclosure or non-disclosure of relevant information and documentation;
- refusal to grant additional time for review/comment by Grassy Narrows;
- MECP pre-judging that Grassy Narrows and its experts were unlikely to raise any new issues in relation to documents provided by the Ministry about a week before the issuance of the scoped PTTW;
- failure to provide or require capacity funding to Grassy Narrows for technical reviews of PTTW documentation;
- systematic dismissal of most, if not all, Grassy Narrows’ concerns, submissions and technical reports;
- unfounded insistence that Grassy Narrows repeatedly raised the same concerns although these outstanding concerns were never meaningfully addressed or rectified by the MECP or GBR;
- improperly opining that Grassy Narrows’ concerns are “best addressed” through other instruments (e.g., the future ISW ECA);
- failing to consider cumulative impacts of past/present/planned industrial activity in the area on Grassy Narrows’ rights, and failing to look at the impact of the AEX program on Grassy Narrows’ constitutional rights in a credible and holistic manner;
- the continuing lack of adequate baseline data which Grassy Narrows requires to properly assess potential impacts, including cumulative impacts; and
- MECP issuing the scoped PTTW (in the absence of any known urgency) just prior to the recent holiday break, thereby triggering the *Environmental Bill of Rights* 15-day leave-to-appeal period during the holidays and making it exceptionally difficult for Grassy Narrows to exercise its right to seek leave to appeal the scoped PTTW.

“Meaningful consultation is not intended to simply allow Aboriginal peoples ‘to blow off steam’ before the Crown proceeds to do what it always intended to do. Consultation is meaningless when it excludes from the outset any form of accommodation”.<sup>26</sup> In short, the Crown’s duty to consult is not satisfied by simply providing a process for exchanging and discussing information but not acting on the substance of the information, as has been the situation respecting the myriad PTTWs in this matter.

<sup>25</sup> Great Bear Resources Ltd., Application for Permit to Take Water (January 27, 2025), PDF page 13.

<sup>26</sup> *Gitxaala Nation v. Canada*, 2016 FCA 187, para 233 (referring to *Mikisew Cree First Nation v. Canada (Minister of Canadian Heritage)*, 2005 SCC 69, [2005] 3 S.C.R. 388, at para 54).

## VI. Conclusions and Recommendations

On the basis of our preliminary review of the application material, the new PTTW proposal appears to pose substantially the same, if not greater, risks to the health, environment, well-being, and constitutional rights of the ANA community as both the initial PTTW not proceeded with, and the subsequent “scoped” PTTW, with respect to which we have previously apprised the MECP. Consequently, a decision approving the new PTTW application would appear unreasonable and could cause significant environmental harm and has the potential to jeopardize ANA’s Aboriginal, treaty, and inherent rights. Accordingly, ANA submits that the Director should refuse to issue the PTTW.

For the reasons set out at the beginning of these comments, Grassy Narrows also expressly reserves the right to file further supplementary comments and reports after the close of the February 22<sup>nd</sup> public comment period and, if necessary, beyond the extended April 14<sup>th</sup> deadline.

Yours truly,

**CANADIAN ENVIRONMENTAL LAW ASSOCIATION**



Joseph F. Castrilli  
Counsel



Richard D. Lindgren  
Counsel

Encl:

- . - Letter from Joseph B. Fobister, Lead Negotiator, Grassy Narrows Lands Protection Team, January 13, 2025 (Attachment 1);
- Reports of Dr. Kevin Morin, January 2025, Sept. and July 2024 (Attachments 2, 3, 9);
- Reports of Dr. Brian Branfireun, January 2025, Oct., July, June and May 2024 (Attachments 4 to 8);
- Reports of Dr. Rina Freed, Sept 2024, January 2025 (Attachments 10 to 11);

cc. Lands Protection Team  
Jackie Esmonde / Sydney Lang, Cavalluzzo LLP  
David Sone, ANA Advisor  
Luke Crosby / David Bursey, Counsel for Great Bear / Kinross