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BY EMAIL

Attention: Anjala Puvanathan (Director, Ontario Region) (greatbear@iaac-aeic.gc.ca)
Impact Assessment Agency of Canada
Ontario Region
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Attention: The Honourable Steven Guilbeault (ministre-minister@ec.gc.ca)
Ministry of Environment and Climate Change
200 Sacré-Coeur Boulevard
Gatineau QC K1A 0H3

RE: Great Bear Gold Project – Designating Proposed Advanced Exploration Activities

On behalf of Asubpeeschoseewagong Anishinabek (“ANA” or Grassy Narrows First Nation”), we write to share with you Grassy Narrows’ preliminary position with respect to an important aspect of the scope of the Great Bear Gold Project Impact Assessment.

It is Grassy Narrows’ position that the Advanced Exploration (“AEX”) activities proposed by the proponent, Kinross Gold Corporation (“Kinross”), specifically bulk sampling and associated activities, constitute a designated project under the *Impact Assessment Act*.

In the event that you disagree, we formally call on the Minister to designate the AEX activities pursuant to section 9(1) of the *Impact Assessment Act*.

If the Minister chooses to suspend his consideration of designation requests, then we call on the Minister to suspend the Impact Assessment and all AEX activities until the rules of the Impact Assessment process are clear and the Minister is able to consider designation requests that are needed to protect the environment and the rights, health, and wellbeing of Indigenous peoples.

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It is Grassy Narrows' position that the proposed AEX activities are substantial and have the potential to cause significant and long-lasting adverse effects within federal jurisdiction. As such, an Impact Assessment for AEX activities at the Great Bear Project is necessary.

I. Proposed Advanced Exploration Activities

The proposed Advanced Exploration activities and their components include the following:

- A bulk sample of 60,000 t;
- About 1,000,000 t of reactive waste rock;
- Roughly 400,000 t of likely reactive overburden;
- Ore stockpile construction and use;
- Water management infrastructure construction and use;
- Underground working and portal development;
- Water takings;
- Discharge of excess site water to the Chukuni River;
- Water-treatment effluent; and
- Many kilometers of underground ramps and drifts with hundreds of thousands of square meters of reactive mine walls (collectively, the "AEX Activities.")

The proposed activities are substantial – the Company plans to extensively mine valuable ore, which it refers to as "bulk sampling," and to construct infrastructure that is central to the capacity of the mine, during the Advanced Exploration stage. The potential impacts of these activities are significant and widespread.

i. Potential impacts of proposed Advanced Exploration Activities

Grassy Narrows has provided you with four expert reports from Dr. Kevin Morin, enclosed, concerning metal leaching and acid rock draining ("ML-ARD"), water quality and hydrogeology with respect to the Great Bear Gold Project. Dr. Morin is a well-known and respected geoscientist with more than 45 years of experience in the fields of water contamination, contaminant migration, hydrogeology, geochemistry, environmental impact assessment, and computer modelling related to mining and industrial activity.

The examples below are just some of the many potential environmental impacts of the proposed AEX Activities identified by Dr. Morin in his reports:

- Around 1,000,000 tonnes of waste rock will be mined along with the bulk sample and "at least some significant portion is expected to seriously contaminate infiltrating rainfall and snowmelt by ML-ARD for several years." (Morin, April 11 Report)

- Waste rock stored on the surface “will oxidize and begin releasing ML-ARD of some unknown strength and intensity, including a currently unknown number of elevated and potentially toxic elements.” (Morin, March 27 Report)
- The potential for “severe environmental impacts” by this waste rock is ongoing. The waste rock would be placed back underground. Rising underground water levels would flush years of accumulated contaminants off this rock and then flow into the surrounding environment. (Morin, April 11 Report)
- When placed underground, PAG rock will “likely continue to release severe ML-ARD until submerged, at which point a relatively huge amount of accumulated contamination would be released into the underground water. This “major risk to water quality” will “contaminate large surrounding areas.” (Morin, April 23 Report)
- At least 400,000 tonnes of overburden will be piled at the surface. Dr. Morin initially estimated that, based on percentages in Canada, there is a “50% probability that significant portions of the overburden will contaminate water with ML-ARD.” (Morin, April 11 Report) Upon reviewing the latest version of the Company’s Closure Plan, Dr. Morin has concluded that “seriously contaminated water and dust from the Great Bear overburden stockpiles will be allowed to flow into the surrounding environment.” He is currently finalizing a report in response to the Closure Plan which is forthcoming.
- Dewatering during exploration would “significantly dewater surface creeks and lakes including their environmentally important baseflow.” (Morin, April 25 Report)
- Elevated ammonia in AEX mining-related drainages is accompanied by elevated levels of nitrate and nitrite. Elevated concentrations of nitrate can “devastate aquatic ecosystems.” (Morin, March 27 Report) As well, “aqueous sulphate concentrations can increase the methylation of mercury.” (Morin, April 11 Report) These contaminants and their potential impacts are not addressed in the technical documents provided by the Company.
- There is a “false statement” in the Detailed Project Description (November 2023) that “there will be no sources of mercury from the ore processing when in fact the tailings and concentrate from the process will contain mercury. The processing could even cause mercury and other elements to leach more quickly and become more mobile.” (Morin, April 23 Report)
- Dr. Morin agrees that Kinross’ planned discharge of treated effluent into the Chukuni River “would add to cumulative effects, which is a particular concern of Grassy Narrows First Nation.” (Morin, April 25 Report)

Dr. Morin’s reports raise serious concerns regarding the size and scope of the AEX

Activities and their potential environmental impacts. Dr. Morin finds that the studies used to assess the risks of metal leaching and acid rock drainage did not follow the methodology required by the law and cannot be relied upon to provide accurate information about risks and impacts. Dr. Morin is also concerned about the lack of information, which results in the inability to reliably assess ML-ARD and associated impacts. As a result, “the ML-ARD and surrounding impacts have likely been significantly underestimated and even ignored in some cases.” He concludes that “this is one reason that Advanced Exploration at the Great Bear Project should not proceed at this time.” (Morin, March 27 Report)

We also draw your attention to a recent report by Dr. Brian Branfireun which found that the Dryden pulp mill has been discharging effluent into the English-Wabigoon River System which contains sulphates and organic waste that 1) significantly contribute to the methylation of mercury in the river system, and 2) significantly increase the levels of methylmercury – the most toxic form of mercury – in the fish that Grassy Narrows people rely on for their sustenance, livelihood, cultural practices, and Treaty rights. (Branfireun, May 14, 2024 Report) This raises additional concerns for Grassy Narrows regarding the effluent that will be discharged into the river system from the Project, including AEX Activities, and potential adverse interactions with other substances and contaminants in the river system. For example, Dr. Morin confirms that AEX Activities will release sulfate to the Chukuni river which flows into the English River and merges with the Wabigoon River near Grassy Narrows. This risks further elevating already elevated sulfate levels which fuel increased methylation of mercury in sediments which are in turn elevated due to historical mercury releases from Dryden.

Grassy Narrows is extremely concerned that the Project is moving ahead swiftly in the absence of required information and at great risk to the environment, health, and inherent, Treaty and Indigenous rights of Grassy Narrows. Grassy Narrows maintains its position that the proposed AEX Activities, including the extensive mining of valuable ore that the company is calling “bulk sampling”, must be subjected to a rigorous impact assessment.

II. The proposed Advanced Exploration Activities are designated projects under the *Impact Assessment Act*

i. The proposed activities are designated activities pursuant to the *Physical Activities Regulations*

Kinross is constructing a new mine.

The proposed AEX Activities constitute the construction of a new mine, pursuant to section 18 of Schedule 2 to the *Physical Activities Regulations* (the “Regulations”). Section 18 designates:

18. The **construction**, operation, decommission and abandonment of:

(c) a new metal mine, other than a rare earth element mine, placer mine or uranium mine, with an ore **production capacity** of 5 000 t/day or more; (emphasis added)

In its Detailed Project Description (January 2024) at Table C.1, Kinross provides a detailed list of all proposed mine facilities. Kinross contemplates that many of these facilities from Advanced Exploration will or may continue to be used for the actual operation of the mine, including the following:

- Underground and open pit mine facilities, including surface portals, ramps and underground workings, compressor facility, mine dry, and mine air heating;
- Advanced Exploration stockpiles;
- Buildings such as trade/maintenance shop/wash bay, warehouse/storage building, offices, laydown areas and parking, and explosive storage (surface and underground);
- Tailings and site water management facilities such as underground sumps, water ponds, wells, ditching, pumps, pipelines, effluent treatment plant, effluent discharge pipeline, and water supply well(s);
- Waste management facilities such as temporary solid waste storage/waste transfer facility and domestic sewage treatment;
- Power supply facilities, such as emergency diesel-fired generators, natural gas power supply pipeline and generation facilities, onsite electrical distribution lines, and electrical substation and transmission line to E2R (as needed);
- Fuel and reagents facilities including reagents and chemicals, propane tank farm, and fuel station, diesel and gasoline fuel tanks;
- Haul roads, pipelines, and utility corridors;
- Communications infrastructure;
- Core shack;
- Accommodations and camp; and
- Off-property infrastructure, such as a pipeline to Enbridge's natural gas metering station and 115kv transmission line and related infrastructure.

Advanced Exploration, as proposed by Kinross, includes the construction of major infrastructure critical to the operation of the mine, including the construction of portals and ramps, sumps, effluent treatment plants and discharge pipelines, and natural gas pipelines that form the core infrastructure of the proposed mine. As opined by Dr. Morin, these proposed AEX Activities, and the facilities proposed to complete said activities, are far beyond the scope of Advanced Exploration. He states in his April 23 Report that: "In reality, four years of this type of advanced exploration is essentially being used as the first phase of the underground mine plan so that there is relatively little delay to start mining should the project be approved." (emphasis added)

The Detailed Project Description (January 2024) estimates that the production capacity of the Project will be significant: "Metal ore extraction from the open pit and/or underground mine is planned at a nominal rate up to 15,000 tpd or less. When the open

pit(s) and underground mine are operating, there may be daily peaks of ore extraction (maximum rate of extraction) reaching up to 60,000 tpd.” (emphasis added) This means that the ore production capacity of the new mine whose construction is being carried out in large part during AEX is 60,000 tpd.

Thus, Kinross is proposing to **construct** the core infrastructure of a new mine with an ore production **capacity** of greater than 5,000 t per day. They are calling this body of work AEX in an apparent attempt to evade the Impact Assessment process for this work. But the work is clearly the core work of mine construction including the portal and multi-kilometer underground ramp through which the mining will occur immediately after the so-called AEX phase.

Kinross’ proposed AEX Activities can be clearly distinguished from the circumstances underlying the Supreme Court of British Columbia’s decision in *Canada v Taseko Mines Limited*. At issue in *Taseko* was whether the activities contemplated under the proponent’s Work Application were connected to the carrying out of the mine’s operations. The Advanced Exploration Activities proposed by Kinross are significantly larger, more permanent, and far more central to the operation of the mine than in the *Taseko* case.

The work proposed in *Taseko* was exploratory in nature, largely on the surface, and included test pits and drill holes that would be backfilled, temporary access trails, construction of roads that were wider than expected, diamond drilling, and impermanent camp structures. This is distinguishable to the circumstances at hand. Kinross proposes to construct permanent infrastructure, including the construction of the primary portals, ramps, and pipelines, which it explicitly states will be used for the actual operation of the mine and are, in fact, the main infrastructure of the mine. They are the same portal and multi-kilometer underground ramp through which all the underground mining will occur. This is not preliminary to the actual construction of the mine. It *is* the construction of the key components of the mine.

This is not Advanced Exploration. This is the construction of critical infrastructure that will be used to operate the Great Bear Gold mine. The AEX Activities are designated pursuant to section 18(c) of Schedule 2 of the Regulations.

Any interpretation to the contrary would betray the plain meaning of section 18(c) and would place no meaningful limit on the activities that a proponent can label as AEX in order to obtain an effective exemption from an Impact Assessment for those construction activities regardless of the extent of the adverse risks they pose in areas of purported federal jurisdiction.

Kinross is engaging in the “first phase of mining.”

The proposed AEX Activities are substantial and exceed the typical scope of Advanced Exploration. In his reports, Dr. Morin raised concerns regarding the scope of the proposed activities, and opined that the activities could more appropriately be characterized as the “first phase of mining”:

- Large bulk sample: “Advanced Exploration at Great Bear is expected to remove up to 60,000 tonnes of ore as a bulk sample, requiring approximately four years. Please note that in some provinces no tonnage more than 10,000 t is allowed during each five year period [as part of bulk sampling]. As a result, such a relatively large bulk sample at Great Bear, with a gold value likely worth tens of millions of dollars that will likely be recovered, spanning at least four years is considered more of a first phase of mining in some jurisdictions rather than advanced exploration.” (Morin, March 27 Report)
- “Remarkable ratio” of waste rock: “[T]he mining of 60,000 t of ore at Great Bear would result in approximately 1,000,000 t of waste rock, which is a remarkable ratio of roughly 17 tonnes of waste : 1 tonne of ore. This further shows that Advanced Exploration at the Great Bear Project can be considered more like the first phase of mining. The three reasons given by Kinross Gold for this large bulk sample do not explain the need for this volume of mining.” (Morin, March 27 Report)
- Increasing volume of overburden: “For some unexplained reason the volume of overburden is rising substantially. Initially the tonnage was around 200,000 tonnes. In the November 2023 draft Closure Plan it has roughly doubled to 400,000 tonnes. Why is this tonnage so large when Advanced Exploration is an underground operation with only two portals?” (Morin, March 27 Report)
- Activities inconsistent with Advanced Exploration: “In the Project Definition (see Section 2 of this MDAG review), Kinross Gold provided three reasons for a relatively huge bulk sample along with 17 times more waste rock and now 7 times more overburden. However, as explained above, these reasons do not make sense. For example, Kinross says that bulk samples help to prove the continuity of underground access gold deposits and are very important to potential financiers. Yet, most of the proposed underground workings are focussed into two small lateral areas and not throughout the ore zone “to prove the continuity”.” (Morin, April 23 Report)

The large size, scope, duration, and risks of adverse impacts from AEX Activities require an impact assessment. It is clear from Kinross’ technical documents that the Company plans to take far more ore than they need for feasibility studies, ore that has a value worth ten of millions of dollars. As well, Kinross is not planning to remove the ore in a manner or amount that is justified by their feasibility goals. It appears that the Company is planning to extract ore for its value for sale during the Advanced Exploration process.

Grassy Narrows is concerned that Kinross is significantly exceeding typical Advanced Exploration activities which will have greater potential harms to the environment and areas of federal jurisdiction. Exemption of these activities from the Impact Assessment would defeat the purpose of an IA, and make the IA incapable of assessing and preventing adverse impacts in areas of federal jurisdiction.

ii. The proposed activities should be designated by the Minister

In addition to the above, we formally request that the Minister designate the AEX Activities, pursuant to section 9(1) of the *Impact Assessment Act*, as they have the potential to cause adverse effects within federal jurisdiction. Grassy Narrows has serious concerns about these adverse effects.

If the Minister chooses to pause consideration of new designation requests, then the Impact Assessment and the AEX work should be suspended until the amended legislation is in force and the Minister is willing to exercise the full set of tools required to protect areas of federal jurisdiction from adverse impacts, including the power to designate activities.

Grassy Narrows' concerns with regards to adverse effects within federal jurisdiction are outlined in greater detail in our March 6, 2023 submission, enclosed. These concerns apply similarly to the AEX Activities and are summarized below:

- Potential impacts on species at risk and their habitats, including Woodland Caribou (particularly the Sydney Caribou Herd whose range is currently disturbed), Wolverine, Sturgeon, and others;
- Potential impacts on inland fisheries and fish habitat, which Grassy Narrows people rely on and which play an important role in our way of life, sustenance, and livelihood, and which have already been harmed by mercury poisoning and industrial activity as a result of the Crown's failures to protect our fish in the past;
- Potential impacts to Indigenous peoples and the lands reserved for them, including impacts to Grassy Narrows peoples, lands, health, culture, wellbeing, traditional foods, and waters that flow into and through our reserve and which can impact our reserve; and
- Potential impacts to migratory birds and transboundary flows.

We also urge the Minister to consider the environmentally sensitive location in which the proposed activities take place, particularly the cumulative impacts of mercury poisoning, logging, mining, damming, diversion, and other industrial activity that have had adverse effects on areas of federal jurisdiction, including downstream impacts to Grassy Narrows lands, waters, fish, animals, and people. These cumulative effects already exceed any reasonable threshold and have had severe impacts on Grassy Narrows. The Project, and multiple other proposed projects in the watershed, including at least three other gold mines, a lithium mine, and a high level nuclear waste disposal site, threaten to raise the level of cumulative effects even further past the point of where Grassy Narrows people can safely and meaningfully exercise their rights and live their Anishinaabe way of life.

The Agency has previously provided guidance that the Minister may consider potential impacts to Indigenous peoples and in particular, whether the project "contributes to

existing cumulative effects within federal jurisdiction.” We urge the Minister to do so in the circumstances. It is well recognized that Grassy Narrows is among Canada’s most extreme cases of poisoning from environmental pollution. If the power of the Minister to designate activities is not used here to protect Grassy Narrows, it would generate a perception that this power is arbitrary and meaningless.

Due to the many important areas of claimed federal authority that are at serious risk of adverse impacts in the proposed AEX Activities, and due to the vulnerability of, and cumulative impacts on, Grassy Narrows, it is essential that a robust and comprehensive federal Impact Assessment is carried out. We urge the Minister to consider the adverse impacts of the proposed activities on the rights of Grassy Narrows, pursuant to section 9(2) of the *Impact Assessment Act*, and designate the AEX Activities pursuant to section 9(1) of the Act.

An Impact Assessment of Advanced Exploration Activities is necessary.

An Impact Assessment is necessary to ensure that potential environmental impacts under federal jurisdiction are adequately assessed. Ontario does not require a provincial environmental assessment to be performed for AEX Activities (nor for mining projects) and while the Company must obtain some permits for certain peripheral parts of the Advanced Exploration process, these permits exist in isolation, do not address the primary activity of extracting ore, waste rock, and overburden, and do not consider the broader context and cumulative impacts on our rights, our health, and our wellbeing and other adverse impacts within areas of federal jurisdiction.

Grassy Narrows strongly objects to the prospect of project splitting (or "piecemealing" or "segmenting") that would deliberately divide the proposed physical activities at the Great Bear site location into smaller or discrete components, some of which may be subject to an impact assessment and some which would not. For the purposes of implementing sound and credible environmental planning in this case, it is imperative to ensure a complete and robust assessment of the direct, indirect, and cumulative adverse effects of all such functionally related activities on matters of federal jurisdiction, as outlined above. In order to be meaningful and to achieve its purpose, the scope of the Impact Assessment must start where the activities that threaten adverse impacts in areas of federal jurisdiction begin.

In Grassy Narrows' view, this objective can only be secured if the Minister confirms that AEX Activities are already captured within the Impact Assessment requirements that apply to this designated project, or, in the alternative, if the Minister issues an order designating AEX Activities as a project to which the *Impact Assessment Act* applies.

We are deeply concerned that the proposed AEX Activities will fall through the cracks of the regulatory process, but for a comprehensive and fulsome federal Impact Assessment.

We urge the Agency and the Minister to recognize the proposed AEX Activities as designated pursuant to the *Impact Assessment Act*. We implore you to carefully consider

Dr. Morin's reports and our submissions, as well as your duties to Grassy Narrows under Treaty #3 and obligations to uphold the treaty promises, act honourably in your dealings with Grassy Narrows, and find a path forward that is consistent with the spirit of reconciliation. We urge you to act now to ensure that no further harm comes to Grassy Narrows under your watch.

We look forward to your timely response.

CAVALLUZZO LLP

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Jackie Esmonde and Sydney Lang
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Cc:

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