6 December 2016

Dear Ms. Camsell-Blondin:

Subject: DDMI Request to Amend Schedule 8 Item 3

Diavik Diamond Mines (2012) Inc. (DDMI) received the Wek’eezhìi Land and Water Board’s (WLWB) November 14, 2016 Reasons for Decision (RFD) regarding the Aquatic Effects Monitoring Program (AEMP) Response Plan (Directive 7). An excerpt from the RFD is included below, and DDMI has coloured key text for the Board’s consideration in blue.

“A comparison of the information provided in Table 1 and the AEMP Response Plan requirements indicate that the requirements set out in Schedule 8, Item 3 have not been fully addressed. Many of the Schedule requirements ask for descriptions, which are not provided in the table nor in the text. For example, Schedule 8, Item 3(a) states that the AEMP Response Plan shall contain “a description of the parameter, its relation to Significance Thresholds, and the ecological implication of the Action Level exceedance”; however, the Board notes that no description of the parameters and no supporting rationale for the conclusion that any of the Action Level exceedances are not ecologically significant have been provided. Overall, the Board believes that the level of reporting for the AEMP Response Plan provided here by DDMI does not fully comply with the Licence; therefore, the Board has decided not to approve the AEMP Response Plan as provided in DDMI’s cover letter.

Upon initial review, the Board has also noticed that the same concerns appear to be present in the AEMP Response Plan that was provided in the cover letter with the submission of 2015 AEMP Annual Report. The implementation of the Action Level reporting and the link to the AEMP Response Plan was first made by DDMI in the 2014 AEMP Annual Report. Because of the delay associated with the submission of the 2014 AEMP Annual Report, the Board was unable to provide direction regarding the AEMP Response Plan prior to the 2015 and 2016 AEMP monitoring periods. The Board believes that the AEMP Response Plan should be updated to conform to the Schedule requirements, at which time they can be circulated for public review. In order to facilitate a more efficient review of the AEMP Response Plan, the Board believes that DDMI should submit an AEMP Response Plan that conforms to the requirements of Schedule 8, Item 3, for all parameters that have exceeded an Action Level since the 2014 AEMP monitoring period, within ninety (90) days of when the exceedances for the 2016 AEMP monitoring period have been detected.”

The RFD does not appear to have considered previous submissions and Board directions that initiated from the Water License renewal process for the Diavik mine. DDMI would like to clarify for the Board our understanding of previous direction on this topic, as these documents were not referenced in the RFD. Additionally, DDMI would like to clarify that we do not feel it is valuable to
provide the additional information requested in the Board’s directive at this early stage and instead prefer to address the new directive (#7) with a request to revise Schedule 8 Item 3 to better align with previous discussions and DDMI’s approved Response Framework.

In the Water License Renewal Reasons for Decision (Sept 2, 2015), the Board recognized DDMI’s concern that AEMP Response Plan requirements set out in the License may not align with DDMI’s Response Framework, and noted that further clarity could occur through revisions to the AEMP Design Plan and/or changes to Schedules.

The Board recognizes DDMI’s concern that the requirements for Response Plans may not align perfectly with DDMI’s approved Response Framework, but is aware that the next version of the AEMP Design Plan is forthcoming and during the review of that submission, further clarity through revisions to the Design Plan and/or changes to the schedules can occur.

During the review of DDMI’s AEMP Design Plan v4, there were no suggested process changes requested for DDMI’s Response Framework approach, and DDMI provided further information on how the Framework meets the requirements of Part J Item 6 during this review (response to WLWB-55). DDMI has only recently initiated conversations around modifying schedules with the Board and Board staff (September 15, 2016), and Schedule 8 has yet to be addressed.

After receiving Water License W2015L2-0001, DDMI submitted a letter to the Board (October 27, 2015) outlining DDMI’s intended approach to applying Part J Item 6. This was in fact the first submission made in relation to implementation of these items, which differs from the statement in Paragraph 2 from the RFD (page 1 above). The letter requests confirmation of DDMI’s approach from the Board and includes both the notification process and the content of the Response Plan as outlined within the approved AEMP Design, i.e. pre-defined response actions, a description of any new responses (e.g. parameters requiring establishment of benchmarks) and a schedule to address each.

The Board responded to this letter as part of their November 27, 2015 Decision (page 9) for the AEMP Reference Conditions Report. Citing both the reference from the Water License Reasons for Decision and DDMI’s October 2015 letter, the WLWB stated that:

“Currently, the process described by DDMI above [excerpt from October 2015 letter], is acceptable...As requested by DDMI, the 2014 and 2015 AEMP Annual Reports and the AEMP Design Version 4.0 should contain the AEMP Response Plan information noted above.”

The information submitted as part of the cover letter for the AEMP 2014 Annual Report (March 31, 2016) did align with the process and content outlined by DDMI and approved by the Board. It is worth noting that DDMI followed this same approach for the 2015 AEMP Annual Report (September 15, 2016).

DDMI feels that the requirements set out in Schedule 8 Item 3 were unsuitably assigned to the Diavik license, as they were simply a template used for other projects with a different framework structure. DDMI’s preference is to refine the Schedule to align with the approved AEMP Response Framework in which Diavik, reviewers, the Board and its staff have invested significant effort in developing.

Attached for your consideration and approval is a draft of a revised Schedule 8 Item 3 that seeks to provide clarification for all parties. The list of information required in a Response Plan for each parameter has not changed, but rather than requiring this information for an exceedance at any Action Level, DDMI proposes to develop a Response Plan for parameters reaching or exceeding Action Level 4. The rationale for this is that DDMI’s Response Framework contains numerous, specific Action Levels (9 in total for water quality, sediment and eutrophication; 5 for biological effects) compared with the 3 levels (Low-Moderate-High) typically implemented for other projects and outlined in the WLWB’s draft Guidelines for Adaptive Management – A Response Framework.
DDMI Action Levels 1, 2 and 3 have specific, approved response actions that ensure the relevant information (e.g. Effects Benchmark) is in place to properly respond and develop a formal Response Plan if a parameter reaches Action Level 4. By way of comparison, DDMI’s water quality Action Level 4 would be roughly equivalent to Dominion Diamond Ekati Corporation’s ‘Low’ Level (refer to Attachment 1 for an example).

DDMI notes that, should the proposed revisions to Schedule 8 Item 3 be approved, no further information would be required to be submitted in response to WLWB Directive #7 from the November 14, 2016 Reasons for Decision for the 2014 and 2015 AEMP Annual Reports, as none of the parameters reached Action Level 4 in either year.

DDMI proposes to maintain the timeline described in our letter of October 27, 2015 for reporting an Action Level exceedance (Part J Item 6a). As Action Level exceedances are identified in the Annual AEMP Report, our proposal was to highlight any exceedance in the cover letter of the Annual AEMP Report, as was done in 2014 and 2015. This approach aligns with WLWB’s draft Guidelines (2010) and we understand from the November 27, 2015 Decision that it is acceptable to the WLWB.

DDMI recognizes that approval timelines for the AEMP Design Plan v4 may be impacted by this request and recognize that the Board may consider the Design Plan and Response Framework collectively or separately. It would appear to be more beneficial to consider including a schedule change that could be adopted into the current Design Plan approval and applied in advance of DDMI’s upcoming AEMP reports.

Should the Board have any questions or require further information regarding this submission, please contact me directly.

Regards,

Gord Macdonald
Principal Advisor, Sustainable Development

cc  Sarah Elsasser (WLWB)
     Anneli Jokela (WLWB)
     Ryan Fequet (WLWB)

Attached: Proposed Revisions to Schedule 8 Item 3 (Attachment 1)
Attachment 1: Proposed Revisions to Schedule 8 Item 3

Context on Action Levels

- DDMI uses a more specific numeric scale (9 Action Levels for water quality, sediment and eutrophication; 5 for biological) as compared with Ekati and outlined in the WLWB’s Guidelines (Low-Moderate-High).
- Action Levels 1, 2 and 3 include specific, approved response actions to address an increase in any one parameter, and provide the supporting information required to develop a Response Plan should a parameter reach Action Level 4.
- Ekati is first required to submit a Response Plan when a Low Action Level is exceeded.
- Ekati’s Low Action Level for water quality is roughly the same as DDMI’s Action Level 4:
  - Ekati’s Low Action Level for water quality occurs when the average measured monthly near-field concentration is greater than 50% of the water quality benchmark. As an example, the “low” trigger concentration for uranium is 0.0075 mg/L (Ekati AEMP Response Plan V1.2 – Table 3.1-4).
  - DDMI’s Action Level 4 is the 75th percentile of the mixing zone boundary values greater than normal range plus 50% of Effects Threshold. Again using uranium as an example, the “Level 4” trigger concentration for uranium is 0.0075 mg/L.
  - A small difference is DDMI applies a measured 75th percentile value which will exceed a trigger level more easily than the average value applied by Ekati.
- DDMI is therefore requesting to submit Response Plans when Action Level 4 is reached.

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6. If any Action Level defined in the approved Response Framework is exceeded, the Licensee shall:

   a) notify the Board within thirty (30) days of when the exceedance is detected; and,

   b) within ninety (90) days of when the exceedance is detected, submit a Response Plan that satisfies the requirements of Schedule 8, Item 3 to the Board for approval.

7. The Licensee shall implement Response Plans as, and when, approved by the Board.

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The approved Response Framework referred to in Part J, Item 6 includes specific actions that will be undertaken at Action Levels 1 through 3 for water quality, sediment quality, eutrophication indicators and biological parameters.

The AEMP Response Plan referred to in Part J, Item 6, shall be submitted for each parameter that has been reported in the AEMP Annual Report to have reached Action Level 4 or higher and shall contain the following information for each parameter that has been reported in the AEMP Annual Report to have exceeded an Action Level:

   a) a description of the parameter, its relation to Significance Thresholds, and the ecological implication of the Action Level exceedance;
b) a summary of how the Action Level exceedance was determined and confirmed;

c) a description of likely causes of the Action Level exceedance and potential mitigation options if appropriate;

d) a description of actions to be taken by the Licensee in response to the Action Level exceedance including:
   i. a justification of the selected action(s) which may include a cost/benefit analysis;
   ii. a description of timelines to implement the proposed actions;
   iii. a projection of the environmental response to the planned actions, if appropriate;
   iv. a monitoring plan for tracking the response to the actions, if appropriate; and
   v. a schedule to report on the effectiveness of actions and to update the AEMP-Response Plan as required; and,

e) any other information necessary to assess the response to an Action Level exceedance or that has been requested by the Board.