February 13, 2015

Diavik Distribution List:

RE: WLWB responses to procedural questions about water licence renewal proceeding

In response to procedural questions submitted by the Applicant for Water Licence W2015L2-0001, Diavik Diamond Mines Inc. (DDMI), Wek’èezhìi Land and Water Board (WLWB or the Board) staff provides the following clarifications for the information of all parties. DDMI’s questions are numbered below and Board staff’s responses are listed in italics as bullet “a” under each question.

1. Has the “Board proceeding” commenced (Rule 36) – i.e. has the Board deemed the application complete? Is the email of Jan 30 the notification by Board of Proceeding (Rule 38)?

   a. Yes, the application has been deemed complete. The January 30th email requesting input from reviewers serves as the notification of the proceeding, in combination with the Work Plan that has been placed on the WLWB Online Registry and is accessible from the Item Description on the Online Review System.

2. When will we be advised on the exemption from preliminary screening?

   a. A development that requires a water licence is either exempt from preliminary screening or not, based on whether it meets the test set out in the Preliminary Screening Exemption List Regulations Schedule 1 s.2 or 2.1. The Board’s practice is to set out its view on this matter prior to the Technical Session.

3. Is the deadline for “Notice of Intention to Intervene” (Rule 41) combined with the May 7 Intervention Deadline or is this a separate date?

   a. The “deadline for interventions” noted in the Work Plan is the same deadline as the notice of intention to intervene described under Rule 41. The Item Description on the Online Review System states that, “If reviewers believe a public hearing is necessary following the proponent’s response, they must submit an intervention by May 7, 2015”.

4. Information Requests. DDMI has never been involved in a formal IR Process (as compared with comment responses). It would be helpful if we could hear some examples of valid IR requests for a water license renewal. Also, when would an IR be considered to be outside the scope of the renewal and how is this determined – understand the Board determines but what is the process?
a. The goal of the technical session, and subsequent information requests, is to ensure that sufficient detail and clarity is available for parties to present clear arguments and evidence to the Board, and to facilitate questioning at the public hearing. The technical session provides all parties with an opportunity to better understand the development and the positions of other parties. Parties are asked to focus their questions on information or clarification they need to be able to provide public hearing interventions to the Board. In general, information about the project that is associated with the Board’s jurisdiction over land, water, and waste may be considered as information requests. The Board’s practice is to prepare information requests based on outstanding items that arise through discussion at the Technical Session. In addition to the information requests noted in the Work Plan, the Board may issue an Information Request to any party at any stage of any proceeding (Rule 46).

5. When in the Work Plan does the Board decide which issues will be considered in the hearing (Rule 90)?

   a. It is not common for the Board to have to do this, but the Rules allow for it in case the Board needs to rule on the relevance of concerns being raised by the parties.

6. Confirm that the May 7 deadline for interventions is the final opportunity for interveners to submit evidence/rationale for consideration at the public hearings. That is, interveners cannot submit new evidence/rationale within their presentations (due May 18) – correct?

   a. Each party’s public hearing presentation is to be based on their intervention; presentations cannot include new evidence or argument.

7. When is the final date that Interveners/Proponent can submit evidence/rationale to be considered in the preparation of the Draft Water Licence for distribution (June 18)?

   a. Board staff will prepare a draft water licence based on evidence and argument collected throughout the proceeding, up to and including the Public Hearing undertakings. The purpose of distributing a draft water licence is to allow parties to comment on Board staff’s suggested conditions; such comments are not to include new evidence. The draft water licence is not intended to limit in any way the scope of parties’ closing arguments. The Board is not bound by the contents of the draft Licence and will make its decision at the close of the proceeding on the basis of all the evidence and arguments filed by all parties.

8. Can new evidence/rationale be submitted during the comment/final argument process for the Draft Water Licence?

   a. Parties can use closing arguments to update their positions based on the discussions at the hearing and to summarize their final recommendations to the Board. Closing arguments are not to include new evidence.

9. Is the Public Record intended to be open until late August – i.e., when the Board’s decision is rendered (Rule 64)?
a. Unless otherwise determined by the Board, the public record will be closed on the “deadline for closing arguments from Proponent” referred to in the Work Plan.

10. The Work Plan does not identify the date for Public Notice of a hearing, however, Rule 81 specifies 60 days before the hearing date. Can you confirm that Public Notice will be provided prior to March 27, 2015?

   a. Notice of the application and the Public Hearing appeared in the February 9th News North. We also commonly publish a reminder the week prior to the Hearing.

11. Can you confirm that the WLWB will be responsible for completing DDMI’s renewal application...should a transition [to the MVLWB] occur April 1, 2015?

   a. WLWB Board members will have reviewed evidence and the notice of the public hearing will have been published prior to April 1, 2015. Our understanding of section 246 of the MVRMA is that these two things will result in the WLWB members being deemed to continue as members of the Mackenzie Valley Land and Water Board until a decision on Diavik’s WL renewal application is finalized. If Board restructuring proceeds as planned on April 1, 2015, the MVLWB will be the regulatory authority in Wek’eezhii; therefore, the WLWB will not be responsible for completing DDMI’s renewal application, but the WLWB members would be the panel responsible for carrying out the review and decision-making process.

In addition to the clarifications provided above, Board staff would like to remind all parties that the Board maintains the flexibility to adapt the Rules to ensure procedural fairness and provide for effective and efficient proceedings, as exemplified by the following rules:

3. These Rules will be interpreted liberally to achieve the most fair and efficient determination of every matter before the Board.

6. The Board may, by its own motion, or an application by a party in any proceeding, dispense with, vary or supplement these Rules.

Sincerely,

Brett Wheler
A/Executive Director