



Box 32, Wekweètì, NT X0E 1W0
Tel: 867-713-2500 Fax: 867-713-2502

#1-4905 48th Street, Yellowknife, NT X1A 3S3
Tel: 867-765-4592 Fax: 867-765-4593
www.wlwb.ca

September 17, 2019

File: W2015L2-0001

Gord Macdonald
Diavik Closure Manager
Diavik Diamond Mines (2012) Inc.
P.O. Box 2498, 300-5201, 50th Ave
Yellowknife, NT X1A 2P8

Dear Gord Macdonald,

Reclamation Completion Reports and Guidance Regarding Security Refund for Progressive Reclamation

The Wek'èezhii Land and Water Board (WLWB or the Board) met on September 3, 2019 and considered Diavik Diamond Mines (2012) Inc.'s (DDMI's) recent submission of two Reclamation Completion Reports (RCRs) for progressive reclamation of the North Waste Rock Storage Area (WRSA).¹ The Board did not review the RCRs but has considered how they align with requirements of the Water Licence (W2015L2-0001) and the Board's Guidelines. The Board also considered DDMI's upcoming security refund request (as indicated by DDMI in its cover letter to the RCRs),² and is providing DDMI with guidance regarding the request.

Reclamation Completion Reports

DDMI indicated in its cover letter that it submitted the RCRs under Part K, Condition 5 of Water Licence, which reads:

Following the closure and/or Reclamation of components of the Project, the Licensee shall submit a **Reclamation Completion Report** to the Board for approval. The Report shall be

¹ The RCRs have not been posted to the registry since they will be re-submitted in the future, and because there was no public review or Board decision regarding approval of these documents. The cover letter has been posted to the registry, see footnote below.

² See WLWB Online Registry (www.wlwb.ca) for [Diavik – 2017 and 2018 WRSA Reclamation Completion Reports Cover Letter – May 15 19.pdf](#)

developed in accordance with the Mackenzie Valley Land and Water Board and Aboriginal Affairs and Northern Development Canada's *Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites within the Northwest Territories*.

This condition does not require annual RCRs. It is the Board's understanding that the company's primary reason for submitting the RCRs is to support a security adjustment request; however, DDMI did not submit a security adjustment with the RCRs. Submitting an RCR to support an adjustment to security is consistent with the INAC/GNWT/MVLWB's *Guidelines for Closure and Reclamation Cost Estimates for Mines* (the Guidelines for Closure Cost Estimates, 2017),³ and previous direction from the Board.⁴

Because DDMI has not established that submission of annual RCRs aligns with Part K, Condition 5 of the Licence and has not submitted a security refund request, the Board advises DDMI that at this time, the Board will not be reviewing the two RCRs. Further, the Board prefers a single RCR submitted at the same time as any proposed security adjustment.

Security Adjustment Request

In addition, the Board would like to ensure that its expectations for a security adjustment request for progressive reclamation of the WRSA are clear. The Board has outlined expectations in the *MVLWB/INAC Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the NT*,⁵ the Guidelines for Closure Cost Estimates, and in the following correspondence to DDMI:

- A February 9, 2018 letter regarding the Waste Rock Storage Area Closure Plan, including direction to estimate security holdbacks.⁶ In the letter the Board also advised DDMI to refer to a WLWB letter to Dominion Diamond Ekati ULC (Dominion) regarding the Panda Diversion Channel security refund request, to assist DDMI in estimating long-term monitoring and maintenance. In that letter, the Board expressed several expectations regarding refunds. These expectations are relevant to DDMI's upcoming refund request and DDMI should use the letter as guidance, to the extent that it applies.
- An October 5, 2018 letter regarding DDMI's security refund request for re-sloping of the WRSA.⁷
- A December 17, 2018 decision on interim CRP Version 4.0, including several requirements for a revised RECLAIM estimate with interim CRP Version 4.1.⁸ Some of these issues are likely to have direct implications on the security refund request.

³ See wlb.ca for [Guidelines for Closure and Reclamation Cost Estimates for Mines \(2017\)](#).

⁴ See WLWB Online Registry for [Diavik - Closure and Reclamation Plan - WRSA - Progressive Reclamation Refund Request - Board Directive - Oct 5 18.pdf](#).

⁵ See wlb.ca for [MVLWB Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories \(2013\)](#).

⁶ See WLWB Online Registry for [Diavik - Closure and Reclamation Plan - WRSA - Directive and Reasons for Decision - Feb 9 18.pdf](#).

⁷ See WLWB Online Registry for [Diavik - Closure and Reclamation Plan - WRSA - Progressive Reclamation Refund Request - Board Directive - Oct 5 18.pdf](#).

Given that the Board's expectations are housed in several documents, the Board has compiled the expectations into Attachment #1. This will assist DDMI in ensuring all expectations are met and help the Board and reviewers to review the security adjustment request.

Timing of the Security Refund Request

DDMI's refund request will likely have several issues that overlap with the revised RECLAIM estimate for the whole site (e.g., long-term monitoring and maintenance costs, inflation, improved documentation, etc.).⁹ As noted in the Board's March 29, 2019 letter regarding DDMI's request to extend the interim CRP Version 4.1 deadline, any new security adjustment requests (beyond the revised RECLAIM estimate required with interim CRP Version 4.1) from DDMI may prove to be difficult to evaluate prior to a Board decision on interim CRP Version 4.1.¹⁰ Submission of CRP Version 4.1 is only a few months away and DDMI may require more time to complete the refund request. For these reasons, DDMI should not submit the refund request prior to submission of interim CRP Version 4.1. However, DDMI should not delay submission of interim CRP Version 4.1 if the refund request is not ready by December 2019, given the importance of keeping the closure planning schedule on track, as previously emphasized by the Board.¹¹

In summary, a request for a refund for WRSA progressive reclamation should be submitted with the interim CRP Version 4.1 (as part of the revised RECLAIM estimate and supporting documentation), or if DDMI has not completed the refund request in time, following a decision on interim CRP Version 4.1.

Engagement Process

In the Board's March 29, 2019 letter to DDMI, the Board required DDMI engage with the GNWT prior to all future security adjustments and provide a rationale for any differences of opinion. The Board recently defined an engagement process for Dominion's upcoming security adjustment request.¹² The Board noted that it expects this approach will "be more efficient, yield better results, improve the potential for consensus, and prevent unnecessary delays in a Board decision." For the same reasons, the Board is extending this process to DDMI's upcoming RECLAIM estimate for Version 4.1, including the WRSA progressive reclamation refund request. The process is outlined in Attachment #1. Board staff will ensure that the GNWT is aware of its role in this process.

⁸ See WLWB Online Registry for [Diavik - Closure and Reclamation Plan Version 4.0 - Board Decision Letter and Reasons for Decision - Dec 17 18.pdf](#).

⁹ See WLWB Online Registry for [Diavik - Closure and Reclamation Plan Version 4.0 - Board Decision Letter and Reasons for Decision - Dec 17 18.pdf](#).

¹⁰ See WLWB Online Registry for [Diavik - Closure and Reclamation Plan - Version 4.1 - Extension Request - Decision Letter - Mar 29 19.pdf](#).

¹¹ For example, see WLWB Online Registry for [Diavik - Closure and Reclamation Plan Version 4.0 - Board Decision Letter and Reasons for Decision - Dec 17 18.pdf](#) and [Diavik - Closure and Reclamation Plan - Version 4.1 - Extension Request - Decision Letter - Mar 29 19.pdf](#).

¹² See WLWB Online Registry for [W2012L2-0001 - Ekati - Security Adjustment Request - Misery WRSA - Reasons for Decision - Jul 17 19.pdf](#).

Sincerely,

A handwritten signature in blue ink, appearing to read "Joe Mackenzie". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

Joe Mackenzie
Chair, Wek'èezhii Land and Water Board

Copied: Diavik Distribution List

Attached:

Attachment #1 – Compilation of Board Requirements for DDMI's Security Adjustment

Attachment #1 – Compilation of Board Expectations for DDMI WRSA Security Refund Request

Table 1 is a list of expectations previously communicated by the Board through direction or Board Guidelines. They are compiled here to assist DDMI to prepare a security adjustment request and help the Board and Parties review the request.

Table 1. Compilation of Board Expectations for DDMI WRSA Security Refund Request

No	Requirement	Source
1	<p>Submit a Reclamation Completion Report (RCR), including but not limited to:</p> <ul style="list-style-type: none"> • Details, including figures and photos, of the final reclamation work; • An explanation of any work that deviated from the approved design and CRP; • An inventory of the infrastructure removed and that remaining; • All engineered “as-built” reports; • Descriptions of any monitoring that is still required; and • A preliminary assessment on the achievement, or lack thereof, of appropriate closure objectives and criteria. <p>In the conformance table for the security refund request (Item #14 of this table), ensure each of the items above is included.</p>	<p>Diavik - Closure and Reclamation Plan - WRSA - Progressive Reclamation Refund Request - Board Directive - Oct 5 18.pdf and <i>MVLWB/INAC Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the NT, 2013</i>¹³</p>
2	<p>Address the requirement for a Performance Assessment Report (PAR) by either submitting a PAR or providing an explanation for why one is not included.</p>	<p>Diavik - Closure and Reclamation Plan - WRSA - Progressive Reclamation Refund Request - Board Directive - Oct 5 18.pdf</p>
3	<p>Implement the following engagement process:</p> <p>Step 1: Engage with the GNWT regarding the CRP Version 4.1 RECLAIM estimate (including the WRSA progressive reclamation refund) with the goal of building consensus and if consensus is not reached, enabling the proponent and the GNWT to provide a thorough rationale for any differences between the dollar amounts of the Parties’ estimates. During engagement, if consensus is not reached, DDMI should identify any information the GNWT may need to develop an estimate, obtain the GNWT’s estimate if possible, and continue to attempt to achieve</p>	<p>Engagement required in Diavik - Closure and Reclamation Plan - WRSA - Progressive Reclamation Refund Request - Board Directive - Oct 5 18.pdf;</p>

¹³ See wlvb.ca for [MVLWB Guidelines for the Closure and Reclamation of Advanced Mineral Exploration and Mine Sites in the Northwest Territories \(2013\)](#).

	<p>consensus. A series of meetings may be required.</p> <p>Step 2: Following engagement, inform the Board whether consensus was reached.</p> <p>Step 3: If consensus was not reached, the GNWT must submit to the Board a proposed security estimate on December 5, 2019 (i.e., 2 weeks before interim CRP Version 4.1 is due) that takes progressive reclamation of the North WRSA into consideration. This step is considered an Information Request under Rules #61 and #63 of the Board's Rules of Procedure.</p> <p>Step 4: By December 19, 2019, DDMI must submit:</p> <ul style="list-style-type: none"> a) A RECLAIM estimate for Version 4.1 of the interim CRP; and b) a rationale for any differences between DDMI's and the GNWT's estimates. 	<p>Diavik - Closure and Reclamation Plan Version 4.0 - Board Decision Letter and Reasons for Decision - Dec 17 18.pdf; and the Guidelines for Closure Cost Estimates. Process outlined in W2012L2-0001 - Ekati - Security Adjustment Request - Misery WRSA - Reasons for Decision - Jul 17 19.pdf.</p>
4	<p>Ensure the requirements related to Security Issues #1 (including Security Adjustments #1 through #11) through #5 are met. DDMI should include each of these in the conformance table required by Item #14 of this Table.</p>	<p>Diavik - Closure and Reclamation Plan Version 4.0 - Board Decision Letter and Reasons for Decision - Dec 17 18.pdf</p>
5	<p>Estimate a security holdback that addresses the requirements in the Board's February 9, 2018 decision, namely:</p> <ul style="list-style-type: none"> a) uncertainties with the till layer. This holdback can be returned to DDMI once till moisture content has been demonstrated using several years (e.g., 10 years) of monitoring data. The holdback will be in an amount that represents the potential cost of covering portions of the cover that do not reach the required moisture content. b) Uncertainty with climate change predictions beyond 100 years of modelling. This holdback can be returned to DDMI after several years (e.g., 20 years) of post-construction monitoring confirms that the overall long-term trend of thermal performance is consistent with the long-term climate predictions. c) Long-term monitoring and maintenance. <p>DDMI must consider comments from Parties that reviewed DDMI's April 16, 2018 preliminary draft of the holdbacks.</p>	<p>Diavik - Closure and Reclamation Plan - WRSA - Directive and Reasons for Decision - Feb 9 18.pdf.</p>
6	<p>Refine criteria associated with the WRSA progressive reclamation as much as possible and ensure they are improved as outlined in the Board's December 17, 2018 decision on interim CRP Version 4.0. Ensure closure criteria have a temporal aspect to them, as outlined in the Closure Guidelines.</p>	<p>W2012L2-0001 - Ekati - Security - PDC Refund Request</p>

7	<p>Establish a link between the completed progressive reclamation and closure objectives and criteria:</p> <ul style="list-style-type: none"> ○ Identify which of the approved objectives apply to the progressive reclamation work, and which of these have been achieved, if any. ○ Identify which closure objectives (and therefore criteria) related to the progressive reclamation work are performance-based, and cannot be met until long-term monitoring has demonstrated criteria are met. 	<p>Expectations - Jan 25 18.pdf, and (regarding inflation) Diavik - Closure and Reclamation Plan Version 4.0 - Board Decision Letter and Reasons for Decision - Dec 17 18.pdf.</p>
8	<p>Where possible, link closure objectives and criteria for the progressive reclamation work to line items in RECLAIM.</p>	
9	<p>Ensure the WRSA monitoring plan has sufficient detail to support a security estimate for long-term monitoring. The longevity of the plan should be consistent with the timeframe identified in the closure criteria. For example, if an approved closure criterion has a 15-year timeframe, there should be at least 15 years of planned monitoring in the CRP.</p>	
10	<p>Include a long-term maintenance plan for the WRSA. This could be achieved by developing a site-wide plan and describing how that plan addresses the WRSA, or by developing a maintenance plan specific to the WRSA. Regardless, the maintenance plan should cover reasonably likely activities over the long-term, and should include a discussion about the extent to which the plan addresses unforeseen maintenance requirements.</p>	
11	<p>Based on updated maintenance and monitoring plans, identify the long-term monitoring and maintenance costs associated with the WRSA in the RECLAIM estimate. This can be done with component-specific line items for monitoring and maintenance, or by estimating the portion of the site-wide monitoring and maintenance that would apply to the WRSA.</p>	
12	<p>Ensure the RECLAIM estimate for the WRSA accounts for inflation since RECLAIM Version 7 was issued. This can be done using the inflation function in the RECLAIM model. Please contact the GNWT if there are any questions about how the inflation function works.</p>	
13	<p>Ensure any other Board direction or Policy/Guidelines related to the security refund request are satisfied.</p>	
14	<p>Include a conformance Table for all requirements in Attachment #1</p>	NA