



November 7, 2022

Mason Mantla
Chairperson
Wek'èezhù Land and Water Board
BOX 32
WEKWEÈTÌ, NT X0E 1W0

by EMAIL

Dear Mason Mantla:

Diavik Diamond Mines (2012) Inc – Type A Water Licence Amendment – W2015L2-0001

On June 2, 2022, the Government of the Northwest Territories – Environment and Natural Resources (ENR) received the Wek'èezhù Land and Water Board's (Board) recommendation to approve the amendment of the Water Licence W2015L2-0001 (Water Licence) for Diavik Diamond Mines (2012) Inc (DDMI) for Progressive Reclamation. The Board requested Ministerial approval and signature, as per Section 72.13 of the *Mackenzie Valley Resource Management Act* (MVRMA) as delegated under Schedule A of the Delegation Instrument issued under section 4(1) of the MVRMA. As outlined in my August 19, 2022, letter to the Board, I did not approve the Licence, and ultimately submitted a Request for Ruling from the Board to re-open the public record under rules 22 and 38 of the Rules of Procedure. The Request for Ruling was made by my office based upon advice provided to my Department by Board staff. The Request for Ruling was suggested to be the only manner in which the record could be re-opened to address the concerns raised in my June 29, 2022 letter.

Following a public review of the Request for Ruling, on October 19, 2022, the Board denied my request. The Board's decision stated that the June 2, 2022 Reasons for Decision on the Amendment are still the Board's recommendation. However, the Board has also included a new and separate Water Licence for my consideration that excludes the conditions related to decommissioning the collection ponds but retains the amended water use proposed by DDMI.

While this new Licence was not presented or discussed during the proceeding, ENR understands that all Parties accepted the activities associated with flooding the pits and there were no outstanding concerns. This Licence allows DDMI to proceed with anticipated progressive reclamation of the pits.

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The new Water Licence (referred to as “increased water use amendment”) provided by the Board resolves ENR’s concerns noted in previous letters dated June 29, 2022, and August 19, 2022. As such, I have approved the new increased water use amendment Water Licence as submitted by the Board on October 19, 2022.

In closing, I agree with the Board’s suggestion to continue discussions outside of this process regarding outstanding differences between ENR and Board positions regarding the application, collection pond decommissioning, and the deposit of waste. Through these discussions, I am hopeful that the Board’s interpretation of my letters dated June 29 and August 19 can be corrected, particularly the following items:

- the Board’s interpretation of my letters as new evidence
 - I have provided responses to the Board and the Tlicho Government letters to explain the decision only and not to provide the Board with new evidence. Letters submitted to my office from the Board and the Tlicho Government include strong positions that the Ministerial decision made on June 29, 2022 was in error. My letters and the Department’s responses to the Request for Ruling on the Online Review System were solely to explain why the decision was made not to approve the license at that time and to Request a Ruling to reopen the public record for the proceeding.
- the Board’s position that the GNWT’s position has changed over time and bears little resemblance to the final arguments filed by GNWT in the Amendment Application proceeding
 - My June 29, 2022 letter identified 3 legal issues with the June 2, 2022 Amended Water Licence and Reasons for Decision. These issues remain unresolved in that original licence when it comes to the amendment for a new deposit of waste at the Diavik Diamond Mine. The three issues pertain to missing key foundational information required under the Waters Regulations (i.e. statutory requirements); requirements for a new deposit of waste when no evidence was heard during the proceeding to be placed in the Schedule which could be amended by the Board under the very Schedule following issuance; and, that s. 27(5) of the Waters Act applies to this amendment application as it sets the minimum legal floor for such a deposit of waste.
 - Regarding s. 27(5) of the *Waters Act*, as set out in Annex B of my August 19, 2022 letter, no evidence was heard in this proceeding to indicate that any MDMER parameter was not of concern. Consequently, there was no evidentiary basis for omitting an effluent limit for any MDMER parameter.

I will direct my staff to engage with the Board to commence these discussions.

Sincerely,



Shane Thompson
Minister
Environment and Natural Resources

c. Dr. Erin Kelly, Ph.D.
Deputy Minister
Environment and Natural Resources

Julian Kanigan
Assistant Deputy Minister, Environment and Climate Change
Environment and Natural Resources

Ryan Fequet
Executive Director
Wek'èezhii Land and Water Board
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Pursuant to the *Mackenzie Valley Resource Management Act* and Regulations, the Wek'èezhii Land and Water Board, hereinafter referred to as the Board, hereby grants to:

Diavik Diamond Mines (2012) Inc.
 (Licensee)

of P.O. Box 2498 Suite 300, 5201-50th Avenue, Yellowknife, NT X1A 2P8
 (Mailing Address)

Hereinafter called the Licensee, the right to alter, divert or otherwise use water and deposit Waste subject to the restrictions and conditions contained in the *Waters Act* and Regulations and in accordance with the conditions specified in this Licence.

Licence Number: W2015L2-0001 (Formerly W2007L2-0003, MV2005L2-0009, N7L2-1645)
 Licence Type: A
 Water Management Area: NORTHWEST TERRITORIES 05
 Location: LAC DE GRAS, NT
 Purpose: WATER USE AND WASTE DISPOSAL
 Description: DIAMOND MINING AND MILLING
 Quantity of water **not to be exceeded:** SEE PART D, CONDITION 2
 Effective Date of Licence: OCTOBER 19, 2015
 Amendment Date: NOVEMBER 9, 2022 (Increased Water Use Amendment)
 Term of Licence: 10 YEARS
 Expiry Date of Licence: DECEMBER 31, 2025

This Licence issued and recorded at Yellowknife includes and is subject to the annexed conditions.

Wek'èezhii Land and Water Board:

Witness

Chair

APPROVED BY:

Minister of Environment and Natural Resources

W2015L2-0001

