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May 6, 2020

W2013D0007, W2017D0004,
W2012L2-0001, and W2016F0007

Dominion Diamond Mines ULC
900-606 4 Street SW
Calgary, Alberta T2P 1T1

Dear Lynn Boettger and Lukas Novy,

Re: Request for Changes to Authorizations to Reflect CRP Version 3 Decision

The Wek'èezhìi Land and Water Board (WLWB) met on May 6, 2020 and approved Dominion Diamond Mines ULC's (Dominion)'s request to amend Land Use Permits W2013D0007 and W2017D0004, and update Schedule 2 of Licence W2012L2-0001,¹ to reflect the Board's February 19, 2020 decision on security.²

In addition, the Board amended the expiration date for Land Use Permit W2016F007 as per Dominion's April 20, 2020 request, and in accordance with section 37 of the MVLUR W2016F0007.³ As detailed in the Reasons for Decision, Dominion is to submit a Final Plan in accordance with subsection 29(1) of the *Mackenzie Valley Land Use Regulations* (MVLUR) for Permit W2016F0007.

Sincerely,

A handwritten signature in blue ink, appearing to read "Joseph Mackenzie", with a small circular stamp or mark to the right.

Joseph Mackenzie
Chair, Wek'èezhìi Land and Water Board

Copied: Ekati Distribution List

¹ See WLWB Online Registry at www.wlwb.ca for [Ekati Jay Development - Request to Amend Condition 37 - Apr 20 20.pdf](#); [Misery Development - Request to Amend Condition 27 - Apr 20 20.pdf](#); [W2012L2-0001 - Ekati - Request for Schedule 2 Update - Apr 20 20.pdf](#); or [Ekati - Jay Early Works - Discontinuance Request - Apr 20 20.pdf](#)

² See WLWB Online Registry for [W2012L2-0001 - Ekati - ICRP Version 3.0 - Decision Letter and Reasons for Decision - Feb 19 20.pdf](#)

³ See WLWB Online Registry for [Ekati - Jay Early Works - Land Use Permit - Mar 19 19.pdf](#)



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Reasons for Decision

Reference/File Number:	W2012L2-0001 (Type "A" Water Licence)
Licensee:	Dominion Diamond Mines ULC (Dominion)
Subject:	Request for Changes to Authorizations to Reflect Closure and Reclamation Plan (CRP) Version 3 Decision

Decision from the Wek'èezhìi Land and Water Board Meeting of May 6, 2020

1.0 Decision

At the Wek'èezhìi Land and Water Board's (WLWB's or the Board's) May 6, 2020 meeting, the Board made the following decisions:

1. Determined the amendment applications for Land Use Permits W2013D0007 and W2017D0004 are exempt from Preliminary Screening, as per the *Exemption List Regulations* of the *Mackenzie Valley Resource Management Act* (MVRMA), Part 1, Schedule 1, section 2.
2. Approved the Amendment Request and issued Land Use Permit W2013D0007 with the revised condition #37:

The Licensee shall post and maintain a security deposit for the Jay Project with the Minister as follows:

- a) Prior to the commencement of the land-use operation, the Permittee shall deposit with the Minister a security deposit in the amount of \$659,280;
- b) Prior to construction of Jay Dyke, the Permittee shall deposit with the Minister a security deposit in the amount of \$2,430,994; and
- c) Prior to the beginning of Jay open pit mining, the Permittee shall deposit with the Minister a security deposit in the amount of \$8,000,466

3. Approved the Amendment Request and issued Land Use Permit W2017D0004 with the revised condition #27:

Prior to the commencement of the land-use operation, the Permittee shall deposit with the Minister a security deposit in the amount of \$1,397,982.
4. Update Schedule 2 with the following revised condition to align with the Board's February 19, 2020 Decision:
 1. In accordance with subsection 35(1) of the Act and Part C of this Licence, the Licensee shall post and maintain:
 - a) a security deposit of CDN \$260,568,843; and
 - b) additional security deposits on the following schedule:
 - i. At least 60 days prior to completion of 60% Sable pit mining by volume, the Licensee shall post and maintain an additional CDN \$2,864,913.
 - ii. At least 60 days prior to commencement of Jay dyke construction, the Licensee shall post and maintain an additional CDN \$4,591,701.
 - iii. At least 60 days prior to commencement of Jay open pit mining, the Licensee shall post and maintain an additional CDN \$3,155,704.
5. Approved Dominion's request to amend the expiration date for Land Use Permit W2016F0007, in accordance with section 37 of the MVLUR.

2.0 Background

The Ekati Closure and Reclamation Plan (CRP) Version 3.0 proposed adjustments to security, including land and water splits for the Misery Underground Development and Jay Project.⁴ In consideration of the Ekati CRP Version 3.0, the Board made the following decisions on February 19, 2020 with respect to security:⁵

- Decision N: The Board accepts the RECLAIM estimate submitted by Dominion with its response to comments on July 4, 2019, with an adjustment to reflect the Board's recent security decision regarding progressive reclamation of the Misery WRSA.
- Decision S: The Board accepts Dominion's proposal to require land-related security under the Land Use Permits and water-related security under the Water Licence.
- Decision U: The Board will adjust Schedule 2 of the Water Licence when the Permits are amended. To initiate the Land Use Permit amendment process, Dominion must submit Land Use Permit amendment applications that meet the expectations in the Land Use Permit Guide.
- Decision V: The Board approves Dominion's proposal to phase the Jay Development security deposit payments as described in the 2017 Annual CRP Progress Report.

⁴ See WLWB Online Registry for [W2012L2-0001 - Ekati - ICRP - Version 3.0 - Part 2 - Aug 15 18.pdf](#), section 10

⁵ See WLWB Online Registry for [W2012L2-0001 - Ekati - ICRP Version 3.0 - Decision Letter and Reasons for Decision - Feb 19 20.pdf](#)

In accordance with subsection 26(2) of the *Mackenzie Valley Land Use Regulations*, land use permits can only be amended upon receipt of a written request from the permittee. The Board's February 19, 2020 Reasons for Decision stated that Schedule 2 would be updated with the Land Use Permit amendment process.

On April 20, 2020, Dominion submitted a request to amend Land Use Permits W2013D0007 and W2017D0004, and update Schedule 2 of Licence W2012L2-0001,⁶ to reflect the Board's February 19, 2020 decisions on security. In its April 20, 2020 submission, Dominion described the administrative nature of its requests:

The submissions included here are a direct result of WLWB decisions related to ICRP Version 3.0 which approve the security amounts to be posted and corresponding land and water splits. These amendments are administrative in nature and are required to proceed with the implementation of the WLWB decisions related to security. All of the information presented in the attached LUP amendment applications and Schedule 2 changes have undergone a formal public review process; no additional public review process is required.

In addition, Dominion's April 20, 2020 submission included a request for discontinuance of Land Use Permit W2016F0007, for which its activities have been encompassed by Land Use Permit W2013D0007. Discontinuance requests are not typically circulated for review and was forwarded to the Inspector.

On April 21, 2020, the distribution list was informed that a formal review of the amendment requests to Land Use Permits W2013D0007 and W2017D0004, and the update to Schedule 2 of Licence W2012L2-0001 had not been initiated at that time and requested that any questions or requests from Parties to initiate a formal review be provided by April, 28, 2020 at 5:00pm MST. On April 28, 2020, the Inspectors provided a response and the GNWT-ENR responded stating it had no comments. The responses received are available on the WLWB online registry.⁷

3.0 Reasons for Decision

3.1 Amendment to Permits W2013D0007 (Jay Development) and W2017D0004 (Misery Development)

As required by Decision U of the Board's February 19, 2020 Reasons for Decision, Dominion has proposed amendments to Permits W2013D0007 (Jay Development) and W2017D0004 (Misery Development) to

⁶ See WLWB Online Registry for [Ekati Jay Development - Request to Amend Condition 37 - Apr 20 20.pdf](#); [Misery Development - Request to Amend Condition 27 - Apr 20 20.pdf](#); [W2012L2-0001 - Ekati - Request for Schedule 2 Update - Apr 20 20.pdf](#); or [Ekati - Jay Early Works - Discontinuance Request - Apr 20 20.pdf](#)

⁷ See WLWB Online Registry for [Ekati - Jay Development - Request to Amend Condition 37 - Review Summary - Apr 28 20](#); [Misery Development - Request to Amend Condition 27 - Review Summary - Apr 28 20.pdf](#); [W2012L2-0001 - Ekati - Water Licence - Security Adjustment 8 - Review Summary - Apr 28 20.pdf](#); or [Ekati - Jay Early Works - Discontinuance Request - Review Summary - Apr 28 20](#)

reflect the Board's decision to require land-related security under the Land Use Permits and water-related security under the Water Licence (Decision S).

3.1.1 Exemption to Preliminary Screening

In accordance with *Preliminary Screening Requirement Regulations*, the Board must conduct a preliminary screening of the Amendment Requests. However, Schedule 1 (Section 2), Part 1, paragraph 2(b) of the *MVRMA Exemption List Regulations* states that an application can be exempt from preliminary screening if:

A development, or a part thereof, for which renewal of a permit, licence or authorization is requested that (a) has not been modified; and (b) has fulfilled the requirements of the environmental assessment process established by the *Mackenzie Valley Resource Management Act*, the *Canadian Environmental Assessment Act* or the *Environmental Assessment Review Process Guidelines Order*.

In its submission, Dominion stated "a preliminary screening is not required as the amendments requested are not modifying the development activities which have previously undergone a preliminary screening or environmental assessment." The letter describes that the Jay Project completed an environmental assessment process under Part 5 of the MVRMA,⁸ and the Misery Development went through a screening process in 2017.⁹ No comments on the preliminary screening were received during the public review.

The Board agrees that the proposed amendments to W2013D0007 and W2017D0004 are exempt from Preliminary Screening.

- ***Decision #1: The Board has determined the amendment applications for Land Use Permits W2013D0007 and W2017D0004 are exempt from Preliminary Screening, as per the Exemption List Regulations of the MVRMA, Part 1, Schedule 1, section 2.***

3.1.2 Amendment to Condition 37 of Permit W2013D0007 (Jay Development)

Previously, security associated with the Jay Development (Permit W2013D0007) and Jay Early Works Development (Permit W2016F0007) was required by Schedule 2 of the Water Licence (W2012L2-0001). On February 19, 2020, the Board approved that all land-related security for the Jay Development be required under Permit W2013D0007. Dominion has suggested the following wording for an amended Condition 37:

- a) Prior to the commencement of the land-use operation, the Permittee shall deposit with the Minister a security deposit in the amount of \$659,280;
- b) Prior to construction of Jay Dyke, the Permittee shall deposit with the Minister a security deposit in the amount of \$2,430,994; and

⁸ See the Review Board Online Registry at www.reviewboard.ca for [Report of Environmental Assessment and Reasons for Decision](#) (EA1314-01)

⁹ See WLWB Online Registry for [W2012L2-0001 - Ekati - WL Amendment - Misery UG - Preliminary Screening Determination - Nov 27 17.pdf](#)

c) Prior to the beginning of Jay open pit mining, the Permittee shall deposit with the Minister a security deposit in the amount of \$8,000,466.

The proposed condition and associated phasing of security aligns with the Board's February 19, 2020 Decision. The Board has added additional text to Dominion's proposed condition to better align with standard language used in phased security conditions.

➤ **Decision #2: The Board has approved the Amendment Request and issued Land Use Permit W2013D0007 with the revised condition #37:**

The Licensee shall post and maintain a security deposit for the Jay Project with the Minister as follows:

- a) Prior to the commencement of the land-use operation, the Permittee shall deposit with the Minister a security deposit in the amount of \$659,280;***
- b) Prior to construction of Jay Dyke, the Permittee shall deposit with the Minister a security deposit in the amount of \$2,430,994; and***
- c) Prior to the beginning of Jay open pit mining, the Permittee shall deposit with the Minister a security deposit in the amount of \$8,000,466.***

3.1.3 Amendment to Condition 27 of Permit W2017D0004 (Misery Development)

Previously, land and water related security for the Misery Underground Development was required by Schedule 2, Condition 4 of Licence W2012L2-000. With its July 12, 2018 Decision for security associated with the Misery Underground Development, the Board stated that "If requested, the Board will consider a future proposal to split the deposit between the Land Use Permit and Water Licence with the benefit of additional information, complete calculations, and a public review process.¹⁰ With its consideration of the CRP Version 3.0, the Board approved land-related security for the Misery Underground Development be required by Permit W2017D0004.

In its April 20, 2020 submission, Dominion suggested the following wording for a revised Condition 27: "Prior to the commencement of the land-use operation, the Permittee shall deposit with the Minister a security deposit in the amount of \$1,397,982."

The Board believes the proposed condition and associated security aligns with the Board's February 19, 2020 Decision and standard Land Use Permit Conditions.

➤ **Decision #3: The Board has approved the Amendment Request and issued Land Use Permit W2017D0004 with the revised condition #27:**

Prior to the commencement of the land-use operation, the Permittee shall deposit with the Minister a security deposit in the amount of \$1,397,982

¹⁰ See WLWB Online Registry for [W2012L2-0001 - Ekati - Water Licence - Amendment - Misery UG - RFD and Recommendation to Minister - Jul 12 18.pdf](#)

3.2 Update to Schedule 2 of Water Licence W2012L2-0001

Decision U of the Board's February 19, 2020 decision states that "The Board will adjust Schedule 2 of the Water Licence when the Permits are amended." With the request to amend the Land Use Permits, Dominion has explicitly requested that Schedule 2 also be updated at this time and proposed a schedule to reflect the Board's February 19, 2020 decision. The proposed schedule reflects the applicable decisions on security¹¹ and therefore the Board believes it to be appropriate.

- ***Decision #4: The Board has updated Schedule 2 to align with the Board's February 19, 2020 Decision.***

3.3 Request for Discontinuance of W2016F0007 (Jay Early Works)

In accordance with section 37 of the MVLUR, Dominion has requested Permit W2016F0007 be discontinued. Section 37 states:

(1) Subject to subsection (2), where a permittee wishes to discontinue a land-use operation at any time prior to the date of completion set out in the permit, the permittee shall give a notice of discontinuance in writing to the Board and, where the land-use operation is being carried out on private lands, to the landowner, indicating the date on which it is proposed to discontinue the operation.

Dominion describes that the Jay Early Works Permit (W2016F0007) is no longer necessary as its activities have been encompassed by Land Use Permit W2013D0007. In addition, Dominion notes that it has now completed many of the activities found within the scope of Permit W2016F0007. Dominion requests the expiration date of LUP W2016F0007 be changed to May 15, 2020. The Inspector had no concerns with the proposed discontinuance of W2016F0007 as all of the permitted activities are covered under permit W2013D0007.¹²

- ***Decision #5: The Board has approved Dominion's request to amend the expiration date for Land Use Permit W2016F007, in accordance with Section 37 of the Mackenzie Valley Land Use Regulations.***


In accordance with subsection 29(6) of the MVLUR, a permittee remains responsible for all obligations arising under the permit or under these Regulations until such time as the Board issues a letter of clearance pursuant to section 33. Subsection 29(1) of the MVLUR requires that the permittee must submit a final plan within 60 days after the completion of the land-use operation or the expiration of the permit, whichever occurs first. As noted by the inspector,¹³ a final plan must be submitted prior to final clearance.

¹¹ See WLWB Online Registry for [W2012L2-0001 - Ekati - ICRP Version 3.0 - Decision Letter and Reasons for Decision - Feb 19 20.pdf](#) and [W2012L2-0001 - Ekati - Misery Refund Request - Reasons for Decision - Nov 20 19.pdf](#)

¹² See WLWB Online Registry for [W2012L2-0001 - Ekati - Water Licence - Security Adjustment 8 - Review Summary - Apr 28 20.pdf](#)

¹³ See WLWB Online Registry for [W2012L2-0001 - Ekati - Water Licence - Security Adjustment 8 - Review Summary - Apr 28 20.pdf](#)

Signed the 6th day of May 2020, on behalf of the Wek'èezhìi Land and Water Board



Witness



Joe Mackenzie
Chair, Wek'èezhìi Land and Water Board
