



P.O. Box 119
GJOA HAVEN, NU X0B 1J0
TEL: (867) 360-6338
FAX: (867) 360-6369

ᓄᓇᓂᓪᓴ ᐃᓕᓕᓂᓪᓴ ᑲᓂᓕᓪᓴ
NUNAVUT IMALIRIYIN KATIMAYINGI
NUNAVUT WATER BOARD
OFFICE DES EAUX DU NUNAVUT

April 27, 2009

File No: 2AM-JER0410

Via Email

To: The Service List

Dear Sirs/Mesdames:

Re: Tahera Diamond Corporation and Benachee Resources Inc. Court File No. 08-CL-7355

The Nunavut Water Board (Board or NWB) would like to advise the parties that the NWB is the regulatory authority responsible for water licence No. 2AM-JER0410¹ issued to Benachee Resources Inc., a wholly owned subsidiary of Tahera Diamond Corporation on December 21, 2004 and formally approved by the Minister of Indian and Northern Affairs Canada on January 25, 2005.²

The Board has responsibilities and powers over the regulation, use, and management of water in the Nunavut Settlement Area (NSA), except for the use of water for navigational purposes, as defined in Article 13 of the NLCA, as well as the Federal *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSTRA or the Act)³.

Under the NWNSTRA, the NWB is empowered to issue, renew, amend, assign or cancel a water licence, with or without a public hearing depending upon the type of activity and type of licence required. Persons or organizations wishing to use water or deposit waste that may enter into water within the NSA must apply for a water licence from the NWB, with few exceptions⁴.

Section 44(1) of the Act states:

¹ Type A Water licence 2AM-JER0410 for mining and milling for the Jericho project was issued to Benachee Resources Inc, a wholly owned subsidiary of Tahera Diamond Corporation on December 21, 2004 with reasons for decision on December 22, 2004.

² In accordance with section 56 of the *NWNSTRA*.

³ Assented to on April 30, 2002

⁴ Exceptions:

- The use of waters is for a domestic purpose;
- The use of waters is for the purpose of extinguishing a fire or, on an emergency basis, controlling or preventing a flood;
- The use of waters is in a national park;
- The deposit of waste is in a national park; or
- The instream use of water does not consume water (except as noted above) nor impair the water quality.

A sale or other disposition by a licensee [by a licensee (the “assignor”)] of any right, title or interest in an appurtenant undertaking constitutes, subject to the authorization of the Board, an assignment of the licence to the person to whom the sale or other disposition is made [(the “assignee”)].

In addition Section 44(2) states:

The Board shall, on application authorize the assignment of a licence if it is satisfied that the assignment and the operation of the appurtenant undertaking would not be likely to result in a contravention of any condition of the licence or any provision of this Part or the regulations.

The Board is also permitted to require a prospective assignee to furnish and maintain security.⁵

It is very important for a potential assignee to understand that by undertaking the assignment of the licence the assignee is:

- Accepting responsibility for the performance of all of the terms and conditions of the license and any and all requirements found in the Act and the Regulations that were imposed on the assignor;
- Agreeing to accept and be responsible for all liabilities incurred as a result of the assignor’s actions to date under the license; and
- Undertaking to pay any security required by the Board before initiating any activity under the license.

To show that a potential assignee understands the implications of the assignment, the assignee must sign an *Undertaking of Proposed Assignee* in the presence of a witness who must also sign the Undertaking and file an *Affidavit of Execution - Undertaking of Proposed Assignee*. The witness must be a person who knows the assignee and actually witnesses the assignee signing the Undertaking.

The *Northwest Territories Waters Regulations*⁶ (NTWR or Regulations) apply in Nunavut until they are replaced or repealed under the NWNSRTA.

An application for authorization for the assignment of a licence must be submitted by the existing licensee (assignor) to the Board not less than 45 days⁷ before the date on which the applicant proposes to assign the licence, and include the following:

⁵ In accordance with section 76 of the NWNSRTA.

⁶ Adopted by the Parliament of Canada on June 8, 1993 pursuant to the *Northwest Territories Waters Act*. An important exception is section 5 of the Regulations related to water use or waste deposit without a licence. This section, by order of council, ceased to apply in Nunavut after July 2002, to eliminate inconsistency between the NLCA and the Regulations.⁶ At the time of writing this Guide, Nunavut specific water regulations are being developed under the NWNSRTA.

⁷ In accordance with section 10 of the Regulations.

1. A completed **Application for Assignment** form, including the name and address of the assignee and executed **Declaration of Licensee** (refer to Appendix C-1).
2. An executed **Undertaking of Proposed Assignee** (refer to Appendix C-3) and **Affidavit of Execution – Undertaking of Proposed Assignee** (refer to Appendix C-4), including, if applicable, the corporation's Certificate of Incorporation. A *Guide to Completing an Undertaking of Proposed Assignee* is provided in Appendix C-2.
3. **Copies of all documents pertaining to the lease, sale, rental or other disposition of the property or the licence from one party to another**. These documents will be available to the public, so dollar figures may be blacked-out. The application will not be considered by the Board without these documents.
4. **A statement of financial responsibility of the assignee** prepared in accordance with Appendix B.
5. For licences which require the provision of security, **a letter to the NWB from the Manager of Water Resources, Indian and Northern Affairs Canada (INAC)**, confirming that, subject to the approval of the Board, the assignee has furnished security in the amount required by the licence and in a form satisfactory to the Minister. The release of security furnished by the assignor is administered by INAC upon NWB confirmation of the assignment of the licence.
6. **An updated financial security assessment** prepared in accordance with Appendix A.
7. **Letters from each Designated Inuit Organization (DIO) and existing or other water users** confirming that the proposed assignment does not negatively impact any existing water compensation agreement(s).
8. **A statement of the assignee's capacity to implement the conditions of the water licence** and a **schedule for the implementation of all plans, manuals, and reports** to be submitted under the licence.
9. **\$30.00 application fee** payable to the Receiver General for Canada.

Upon submission of a complete assignment application, the NWB gives notice of the application. Typically, the NWB will give notice via email by referring the application to a distribution list comprised of interested parties including the applicant, federal and territorial government departments, community representatives, Designated Inuit Organizations (DIO), Hunter and Trapper Organizations (HTO), as well as other agencies or individuals that the Board deems appropriate.

The notice invites persons to provide representations within a specified time period, usually a minimum of thirty (30) days during which time the Board may not act on the application.⁸

⁸ In accordance with section 55(3) of the *NWNSRTA*.

Information and correspondence related to the application is uploaded to the NWB electronic public registry in a directory identified by the licence number.

The general timeframe for completing the water licence assignment process is at least 45 days subject to the submission of a complete application and project specific considerations.

Any inquiries regarding the above can be directed to the undersigned at Dionne@nunavutwaterboard.org

Sincerely,



Dionne Filiatrault, P. Eng.
Executive Director

cc. Service List
William A. Tilleman Professional Corporation, NWB Legal Counsel

APPENDIX A – SECURITY

The Board is permitted to require an applicant to furnish security with the Minister to:

- Compensate eligible persons where a compensation agreement has not been made; and
- Provide for abandonment of the undertaking, restoration of the site of the undertaking, and any ongoing measures required after the abandonment of the undertaking.⁹

The Board requires an applicant to submit a financial security assessment that is prepared in a manner consistent with principals respecting mine site reclamation and implementation found in the *Mine Site Reclamation Policy for Nunavut*, Indian and Northern Affairs Canada, 2002. This document is available from the NWB's ftp site at <ftp://nunavutwaterboard.org/> as well as the following link: http://www.ainc-inac.gc.ca/ps/nap/recpolnuna_e.pdf.

The financial security assessment must provide an estimate of the total financial security for final reclamation equal to the total outstanding reclamation liability for land and water combined sufficient to cover the highest liability over the life of the undertaking. For purposes of financial security assessment, estimates of reclamation costs must be based on the cost of having the necessary reclamation work done by a third-party contractor if the operator defaults. The estimate must also include contingency factors appropriate to the particular work to be undertaken.

For mining projects, the recognized methodology for calculating reclamation costs for purposes of financial security assessment is the RECLAIM or other similar, appropriate model. The RECLAIM model is available from the NWB ftp site.

⁹ In accordance with the NWNSRTA section 76

APPENDIX B –FINANCIAL

The Board is prohibited from issuing a licence unless the applicant satisfies the Board that the financial responsibility of the applicant, taking into account past performance, is adequate for:

- The completion of the appurtenant undertaking;
- Such measures as may be required in mitigation of any adverse impact; and
- The satisfactory maintenance and restoration of the site in the event of any future closing or abandonment of that undertaking.¹⁰

The Board requires each applicant to submit a statement of financial responsibility to satisfy this requirement. If the applicant is an entity for which audited financial statements are issued, a copy of the most recent audited financial statements must be attached to the statement of financial responsibility.

Before issuing a water licence in the name of a corporation, limited company or other business entity, the NWB also requires a list of the officers of the company and a copy of the Certificate of Incorporation or evidence of registration of the company name. Non-profit organizations must provide proof that they are a registered society or organization.

¹⁰ In accordance with the NWNSRTA section 57

APPENDIX C -

C-1 Application for Assignment Form and Declaration of Licensee (Assignor)

C-2 Guide to Completing an Undertaking of Proposed Assignee

C-3 Undertaking of Proposed Assignee

C-4 Affidavit of Execution – Undertaking of Proposed Assignee



P.O. Box 119
GJOA HAVEN, NU X0B 1J0
TEL: (867) 360-6338
FAX: (867) 360-6369

NUNAVUT WATER BOARD
OFFICE DES EAUX DU NUNAVUT

C-1 APPLICATION FOR ASSIGNMENT AND DECLARATION OF ASSIGNEE

1. LICENCE NO:	2. WATER SOURCE:
3. LICENSEE INFORMATION: Name: _____ Address: _____ Phone: _____ Fax: _____ e-mail: _____	
4. Water use fees pertaining to this licence must be paid in full	
5. DECLARATION OF LICENSEE: I, _____ representing _____, hereby declare that the sale or other disposition of any right, title or interest in the appurtenant undertaking will not result in any contravention of any provision of condition of water use licence number _____ or of any provision of the Nunavut Waters and Nunavut Surface Rights Tribunal Act or the applicable Regulations, and hereby request the assignment of the water use licence to: Proposed Assignee: _____ Address: _____ Phone: _____	

6. PROPOSED DATE OF ASSIGNMENT:

☐ 45 days after date of application

☐ Other: _____

7. APPLICATION FEE:

Application fee for assignment of water licence is \$30.00 (payable to the Receiver General for Canada)

8. CHECKLIST:

The following Documents **Must** be included with the Application for Assignment where applicable:

- ☐ Completed Application for Assignment and executed Declaration of Assignee
- ☐ Executed Undertaking of Proposed Assignee and Affidavit of Execution – Undertaking of Proposed Assignee
- ☐ Copies of all documents pertaining to the lease, sale, rental or other disposition of the property or the licence from one party to another
- ☐ Statement of financial responsibility of the assignee
- ☐ For licences which require the provision of security, a letter to the NWB from the Manager of Water Resources, Indian and Northern Affairs Canada (INAC)
- ☐ An updated financial security assessment
- ☐ A letter from each Designated Inuit Organization (DIO) and existing or other water users confirming that the proposed assignment does not negatively impact any existing water compensation agreement(s)
- ☐ Statement of assignee's capacity to implement the conditions of the water licence and a schedule for the implementation of all plans, manuals and reports
- ☐ \$30.00 application fee payable to the Receiver General for Canada

1. SIGNATURE

Name (Print)

Title (Print)

Signature

Date

C-2 GUIDE TO COMPLETING AN UNDERTAKING OF PROPOSED ASSIGNEE

Individuals and corporate entities must execute and complete the Undertaking in accordance with the rules located below. You must enclose a cheque payable to the **Receiver General for Canada** for the application fee to process the application for assignment, and a separate payment in a form and in the amount of the security required by the Licence, if applicable. The Nunavut Water Board will not process your application unless the application fee and security payment are enclosed.

INDIVIDUAL

Please execute the Undertaking in the following manner:

- (1) Print your full legal name on the blank line beginning with (a) in the “AND WHEREAS” section;
- (2) At the end of the “IN WITNESS WHEREOF” sentence, write the day, month and year you signed this document before a witness;
- (3) On page 2, sign on the line located above the “Signature of Individual” phrase before a witness. The witness must sign on the line located to the left of your signature. You and the witness must print your names under your respective signature lines;
- (4) The witness must complete the Affidavit of Execution before either:
 - (a) a Commissioner of Oaths for Nunavut if you and your witness both live in Nunavut and both of you have signed the Undertaking in Nunavut; or
 - (b) a Notary Public for the Province or Territory in which the Affidavit was signed.
- (5) Please ensure the Commissioner or the Notary Public completes the jurat and affixes his or her commissioner or notarial seal;
- (6) Please ensure you attach a copy of the signed Undertaking to the Affidavit of Execution.

CORPORATE ENTITY

Please execute the Undertaking in the following manner:

- (1) Print the full legal name of the corporation on the blank line beginning with (b) in the AND WHEREAS” section;
- (2) At the end of the “IN WITNESS WHEREOF” sentence, write the day, month and year you signed this document;
- (3) On page 2, sign your name on the line located next to the phrase “Per:” and then print your name and your position in the corporation under this signature line;
- (4) Affix the corporation’s corporate seal where indicated.
- (5) You must attach to the Undertaking a copy of the corporation’s Certificate of Incorporation.

(6) You are required to sign the Undertaking before a witness. You are required to complete the Affidavit of Execution.

C-3 UNDERTAKING OF PROPOSED ASSIGNEE(section 44 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*)**WHEREAS**

The Nunavut Water Board ("NWB") issued Licence No. _____ dated _____, 200__ ("the Licence") to _____ (the "**Assignor**"), for a term of _____ years starting on _____, 200__ and expiring on _____, 200__, subject to the terms and conditions set out in the Licence.

AND WHEREAS (the Proposed "**Assignee**")

(a) _____ (individual)

OR

(b) _____, (a corporate entity incorporated pursuant to the laws of _____)

requests that the NWB approve the Assignment of the Licence from the Assignor to the Proposed Assignee pursuant to section 44 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* ("Act").

NOW THEREFORE

Effective on the date that the NWB approves the assignment of the Licence, the Proposed Assignee undertakes and accepts responsibility for the performance of all of the terms and conditions of the Licence including the performance of all liabilities arising pursuant to any Licence term or condition, whether arising before or after the effective date of the assignment, **AND** undertakes to pay any security required of the Assignor when the Licence was granted.

IN WITNESS WHEREOF the Proposed Assignee executed this Undertaking on _____, 200__.

SIGNED. SEALED AND DELIVERED

in the presence of:

)
)

_____) _____
Witness) (name of Individual)

On behalf of _____
(Corporation Name)

Per: _____
Position _____
(corporate seal)

