



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

ᓄᓇᓂᓪ ᐃᓕᓕᓂᓪ ᑲᑎᓕᓪ
NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYIT
OFFICE DES EAUX DU NUNAVUT

NWB File No: 2AM-JER0410

March 21, 2011

Pamela Strand, P. Geol.
President and CEO
Shear Diamonds (Nunavut) Corp.
Suite 220, 17010 – 103 Avenue
Edmonton, AB T5S 1K7
E-mail: pstrand@shearminerals.com

Re: Application for Renewal of a Type “A” Water Licence, 2AM-JER0410

Dear Ms. Strand:

The Nunavut Water Board (NWB or Board) acknowledges receipt on February 28, 2011, of the Type “A” water licence renewal application and supporting documentation from Shear Diamonds (Nunavut) Corp. (“the Applicant” or “Shear”) for the Jericho Project, Licence No. 2AM-JER0410.

Your submission has been placed in the Board’s Public Registry and is available from our ftp site using the following access (Username: *public* and Password: *registry*) and link:

<ftp://nunavutwaterboard.org/1%20PRUC/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-JER0410/1%20APPLICATION/2011%20Renewal/>

The following documents are included within the renewal application:

- A. Completed water licence renewal application form;
- B. Updated security assessment that includes a reclamation summary (will be provided upon further site investigation work as indicated in the application);
- C. Updated financial statement;
- D. Compliance assessment/status report;
- E. Executive summary – English, Inuktitut and Inuinnaqtun;
- F. \$30 application fee;
- G. \$30 water use fee; and
- H. The following updated Plans:
 - (i) *C1 Diversion Construction Summary;*
 - (ii) *Fuel Storage Containment Facility Design Plan;*
 - (iii) *Preliminary Landfill Design Plan;*
 - (iv) *Landfill Management Plan;*
 - (v) *Preliminary Landfarm Design Plan;*
 - (vi) *Landfarm Management Plan;*
 - (vii) *Contingency Management Plan;*

- (viii) *Wastewater Treatment Management Plan;*
- (ix) *Operations, Maintenance and Surveillance Manual - PKCA Dams;*
- (x) *Emergency Preparedness and Response Plan for Dam Emergencies;*
- (xi) *Waste Management Plan;*
- (xii) *Waste Rock Management Plan; and*
- (xiii) *Interim Closure and Reclamation Plan.*

Based on our initial review of your submission, your application is deemed to be an application for a Type “A” water licence renewal/amendment, which will require a public hearing as required by the Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWSRTA or Act). All public hearing matters will be carried out in accordance with the Board’s *Rules of Practice and Procedure for Public Hearing* dated May 11, 2005 (NWB Rules).

The NWB has determined through a preliminary completeness check that the application and supporting information provided by Shear constitutes a materially complete application¹.

The Board notes however, the absence of information related to pre-licensing information with respect to land use planning and environmental assessment processes. The NWB acknowledges that the Jericho project location is in an area without an approved land use plan. Therefore pursuant to 12.3.5² of the Nunavut Land Claim Agreement (NLCA), the NWB is forwarding the application to the Nunavut Impact Review Board (NIRB) to determine if your application requires further screening, reconsideration of the terms and conditions of the current Project Certificate,³ or a review under Part 5 or Part 6⁴ of the NLCA. It should be understood that the NWB in accordance with 39(1) of the Act may not issue, renew, or amend a licence until the NIRB has completed the screening, reconsideration or where a review is required, issued a new project certificate.

However, the NWB is also mindful that, in the court proceedings approving the sale of the assets, including the Jericho Diamond mine, from Benachee to Shear Minerals Ltd. (Court File No. 08-CL-7355), the Ontario Superior Court of Justice directed the Board to process Shear’s applications “forthwith”. Consequently, in the interests of ensuring this application is dealt with in a timely and co-ordinated manner, but recognizing the limits on the Board’s actions under s. 39, while the Board awaits the direction of the NIRB regarding the pre-licensing process that may be required, the Board will continue with its processing of the application.

In this regard, the Board acknowledges that based on the specific nature of this application (requiring not just a renewal but also amendments to the existing Licence to reflect that the site is no longer in production and is under care and maintenance pending the evaluation of the mineral resource), the Board is providing an opportunity for parties to submit Information Requests (IRs). IRs should identify additional information and/or studies that may be required to evaluate all quantitative and qualitative effects of the undertaking in relation to the current water licence, project certificate concordance with respect to the NWB mandate and application before the Board.

¹ The minimum information requirements set out in the NWB Guide 7 – Licensee requirements following the issuance of a water licence, see Table 3.

² Article 12 of the Nunavut Land Claim Agreement (NLCA) Section 12.3.5 of the NLCA which states
In absence of an approved land use plan, all project proposals other than those
that fall within Schedule 12-1 shall be referred directly to NIRB for screening

³ A copy of the NIRB PC No. 002 is available from the ftp site, Username: public, Password: registry, at the following link:

<ftp://nunavutwaterboard.org/1%20PRUC/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-JER0410/2%20ADMIN/2%20NPC%20NIRB/1%20NIRB/>

⁴ Reference to Article 12 of the NLCA

Accordingly, by copy of this letter, the NWB is asking interested persons to review the scope of the information provided and identify any deficiencies requiring an additional response from the Applicant. The IRs should be submitted to the Board by **April 21, 2011**. All submissions should be provided to the Manager of Licensing at licensing@nunavutwaterboard.org.

Once the application is deemed to be fully complete, including if necessary, the NRB providing direction regarding any pre-licensing requirements that must be met, and following NWB confirmation of concordance with the information requests, the NWB will issue notice of the application pursuant to subsection 55(1) of the *Nunavut Waters Nunavut Surface Rights Tribunal Act* (Act).

The formal technical review of the application will begin on the date of the public notice of the application, however the Board strongly recommends that interested parties do not wait for the publication of the notice to begin their technical review on the information already provided by the applicant, as it is in the best interests of all parties to ensure they engage in timely review and response to the application. At this time, the Board has set a tentative date of **June 10, 2011** as the proposed date for receiving the technical submissions for this application, with a technical meeting tentatively scheduled for **June 21, 2011**. These dates will be confirmed in the notice of the application referred to above.

For additional information with respect to the general processes to be followed, please refer to Attachment - A⁵.

If you have any questions or require clarification on the above, please contact David Hohnstein, Director of Technical Services at 780-443-4406 or by email to dts@nunavutwaterboard.org for any technical inquiries or, Phyllis Beaulieu, Manager of Licensing at 867-360-6338 or by email licensing@nunavutwaterboard.org for any procedural inquiries.

Sincerely,

Dionne Filiatrault, P.Eng
Executive Director

Attachment: A – Excerpt of NWB Guide 5 – Processing Water Licence Applications

cc. Distribution List - Kitikmeot

⁵ Modified excerpt from NWB Information Guide 5 – Processing Water Licence Applications to include legislative references.

ATTACHMENT A – MODIFIED EXCERPT FROM NWB GUIDE 5 – PROCESSING WATER LICENCE APPLICATIONS (SECTION 6)

1.1. NWB receives application and confirms classification of undertaking and type of licence

Following the completion of any NPC and/or NIRB requirements described in section 1 of this Guide, the first step in the water licensing process is for the applicant to submit a water licence application in accordance with the NWB's *Guide 4: Completing and Submitting a Water Licence Application for a New Licence*. Upon receipt, the NWB will confirm the classification of undertaking and the type of water licence application in accordance with the Regulations (See sections 3 and 4 of NWB's *Guide 3: Activities that Require a Water Licence and Types of Water Licences*).

1.2. NWB conducts preliminary completeness check

Once the NWB has received the application, the NWB conducts an internal preliminary check of the application for completeness to ensure that the information requirements outlined in the NWB's *Guide 4-Completing and Submitting a Water Licence Application for a New Licence* have been addressed. If the application is determined to be materially incomplete, meaning that items included in *Table 1: Application Checklist* are missing (see section 5.2 of this Guide), the applicant may be informed by the NWB that their application has been rejected. In other cases, NWB staff will correspond with the applicant to resolve deficiencies before proceeding. A complete application will be assigned a NWB file number.

1.3. If required, NWB may issue project specific guidelines for the preparation of a water licence application

The NWB may provide project specific guidelines to the applicant respecting the information to be provided by the applicant in relation to the application.

In developing the project specific guidelines, the NWB incorporates any requirements of the NIRB project certificate and may circulate draft guidelines to interested parties, offering an opportunity to comment. The NWB integrates those comments and recommendations it considers appropriate before finalizing and issuing the project specific guidelines to the applicant.

1.4. If required, applicant prepares and submits project specific water licence application in accordance with the guidelines

It is the responsibility of the applicant to prepare the water licence application in accordance with the project specific guidelines established by the NWB in section 6.3 of this Guide. Depending upon the completeness of the original water licence application submitted as described in section 6.1 of this Guide, the NWB may require submission of additional information to supplement the original application or resubmission of the entire application. The applicant is also responsible for circulating electronic and hardcopies of the water licence application package to all parties likely to be involved in the public hearing process.

For more information regarding how to file or submit a water licence application, refer to the NWB's *Guide 4 – Completing and Submitting a Water Licence Application for a New Licence* as well as the NWB's *Guide 6 – Electronic Documentation: Submission and Registry*.

1.5. NWB conducts concordance review

Once the NWB receives a copy of the water licence application, it conducts a concordance assessment to determine whether the application documents address the provisions of the project specific guidelines such that the NWB may issue a public notice of application. For clarity, the concordance assessment is an analysis of the presence or absence of the required information. It is not intended as a step to evaluate the quality of the information presented.

In conducting the assessment, the NWB may, depending upon the expected level of public concern, request comments from interested parties on application concordance.

The applicant will be notified by the NWB of the results of the assessment and any deficiencies identified. Upon receiving the results, it is the responsibility of the applicant to respond accordingly, with the submission of additional information, if necessary.

1.6. NWB issues notice of application⁶

Once the Board deems the application complete, a public notice is issued to the council of each municipality in the area affected by the application, and the NWB publishes the notice in a newspaper of general circulation in the area affected or, if there is no such newspaper, in such other manner as the Board considers appropriate. Typically, the NWB also gives 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, DIOs, Hunter and Trapper Organizations (HTOs), as well as other agencies or individuals that the Board deems appropriate.

The notice also invites persons to provide representations within a specified time period advising of the consequences of any failure to respond to the notice (ie. the applicant may not need to compensate an existing or other user, as discussed in the NWB's *Guide 4 – Completing and Submitting a Water Licence Application for a New Licence*, part 1 section 5 Block 17, if that person fails to respond within the time period specified in the notice).

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

To ensure that information provided to the Board in relation to the application is made available to the public within a reasonable time period before the commencement of the hearing, the Board may direct the applicant to make available to any interested parties all information and documents filed by the applicant.

⁶ Notice of the Application is made in accordance with subsection 55(1) of the Act. This notice will invite interested persons to make representation to the Board. Parties will be advised that consequences of failure to respond are outlined in section 59 and subsection 60(2) of the Act.

1.7. Technical review

The technical review phase begins on the date of the public notice and ends on a date specified by the Board prior to the public hearing. It includes the submission of written representations, the technical meetings and pre-hearing conference, and the notice of public hearing, as described in sections 6.7.1 to 6.7.4 of this Guide.

The technical review involves a more detailed review of the water licence application than the concordance assessment with the intent of analysing the quality of the information presented in the application.

Throughout the technical review phase interested parties are encouraged to work cooperatively with the applicant to address minor issues in advance of the proposed technical meetings. The NWB requests receiving notice on issues clarified between the parties for inclusion on the public registry.

The timeframe for the technical review phase is typically 50 days as shown in the Type A (Public Hearing) Time Chart located in Appendix C of this Guide, depending upon the completeness of the initial application and the number of applications requiring the attention of the Board. This timeframe may be expedited for smaller, less complex projects.

1.7.1. Parties submit written representations

Written representations are to be submitted to the Board by the deadline provided in the public notice.

Written representation may include, among other things:

- Summary of party interests, role and/or responsibilities;
- Summary of party understanding of the application;
- Indication of party's approval authority;
- Indication of the party's entitlement to compensation;
- Summary of the results of the party's technical review;
- Expression of concern for potential impacts;
- Comments on security requirements;
- Request for additional information;

Interested parties must consider the following in conducting a technical review:

- a. Whether Parties agree/disagree with the conclusions in the application regarding the following as they relate to the use of water or the deposit of waste on the drainage basin where the use is to be undertaken or the deposit is to be made:
 - i. Qualitative and quantitative effects;
 - ii. Anticipated impact of the use or deposit on other users;
 - iii. Mitigation measures;
 - iv. Compensation measures;
 - v. Monitoring program; and

vi. Options available

- as well as any proposed alternative mitigation and/or monitoring measures which may be more appropriate, and evidence supporting the parties position;
- b. Whether the conclusions in the application are supported by the analysis, and evidence supporting the parties' position;
- c. Whether the appropriate methodology was used in the application to develop conclusions, any proposed alternative methodologies which may be more appropriate and evidence supporting the parties' position;
- d. Assessment of the quality of the information presented; and
- e. Any additional information that would be useful.

If necessary, the NWB may request additional information from the applicant during the public review period. Depending upon the promptness of the applicant's response to the request, the deadline for the submission of written representations may be extended to allow parties additional time to review any new information. The amount of additional review time granted will be determined on a project specific basis.

Written representations are posted on the NWB's electronic public registry in an application specific directory.

1.7.2. NWB holds Technical Meeting (TM) and Pre-Hearing Conference (PHC)

According to Rule 14.1 of the NWB's *Rules of Practice and Procedure for Public Hearings*, PHC's may be held in person, in writing or by teleconference. The Board typically delegates the holding of a PHC to NWB staff. At the time of writing this Guide, it is the Board's preference for the PHC to be held in person.

For logistical purposes, where the PHC is held in person, the TM and PHC are generally scheduled together with the PHC immediately following the TM. This way, both meetings can be conducted at the same location, over the course of a few days.

The purpose of the TM is to informally resolve technical matters between interested parties and the applicant, prior to the PHC, particularly those matters that could affect the Board's determination on any PHC issues. Given the informal nature of the meeting, the NWB Board members are not present at the TM, and the meeting is facilitated by NWB staff. Depending on time constraints and the nature and extent of technical issues to be addressed, the TM may be divided into specific break-out groups (for example water quality, geotechnical, other issues) with each group chaired by a NWB staff member. During the TM, a list of commitments made by the various parties may be compiled and carried forward to the PHC.

The purpose of the PHC is to deal with administrative matters related to the public hearing including:

- a) The timetable for the exchange of information;
- b) The list of issues to be dealt with at the hearing;
- c) The identification of interested parties;
- d) The desirability of amending an application for the purpose of clarification;
- e) The procedures to be followed in a hearing; and

- f) Any other matters that may aid in the simplification and disposition of the application at the Hearing, such as site visits.

The PHC is an opportunity for parties to present any issues that were unresolved during the technical meeting and to hear comments from the public.

If appropriate, a community session is held to facilitate discussion and address concerns from the public.

1.7.3. NWB issues PHC decision

Following the PHC, the NWB issues a PHC decision containing the Board's decision on the matters discussed at the PHC and often includes the list of commitments generated during the TM.

The Board's decision as well as any documents received during the TM or PHC are posted on the NWB's electronic public registry in an application specific directory.

1.7.4. NWB issues notice of public hearing⁷

Typically, following the PHC, the Board issues a formal notice of public hearing. The notice of public hearing must be issued at least sixty (60) days before the commencement of the hearing outlining the location, date, and time of the hearing. In determining appropriate hearing locations, the Board takes into consideration the community or communities within Nunavut most affected by the application.

The notice of public hearing is issued to the council of each municipality in the area affected by the application, and published in a newspaper of general circulation in the area affected, or if there is no such newspaper, in such other manner as the Board considers appropriate. The NWB also gives notice via email to a distribution list comprised of interested parties including the applicant, federal and territorial government departments, community representatives, DIOs, HTOs, as well as other agencies or individuals that the Board deems appropriate.

In some cases the formal public hearing notice is issued prior to the PHC and confirmed at the PHC.

1.8. Parties exchange written interventions

The deadline for the exchange of written interventions is determined by the Board and communicated as part of the PHC decision and public hearing notice. In accordance with Rule 12.4 of the NWB's *Rules of Practice and Procedure for Public Hearings* parties are to submit written interventions no later than 15 days before the commencement of the public hearing. This is to allow all parties time to review the interventions in preparation for the public hearing.

To facilitate the review of interventions, submissions must generally be organized by the categories of "issues" identified at the PHC which generally correspond to the typical sections of a water licence including:

⁷ Subsection 55(2) of the Act requires at least sixty (60) days notice of a public hearing.

- Term of Licence;
- Type and Amount of Security;
- Compensation Agreements;
- Construction;
- Water Use;
- Water Management;
- Waste Management;
- Modifications;
- Contingency Planning;
- Monitoring;
- Closure and Reclamation; and
- Other Issues.

In addition, technical review comments, particularly for matters such as air quality, noise, wildlife, and marine waters must be provided within the context of the NWB's jurisdiction over the use of waters and the deposit of waste in waters or that may enter waters. Interventions must include an executive summary in English as well as the appropriate language and dialect for the region.

Submissions are posted on the NWB's electronic public registry in an application specific directory and filed in the public registry upon receipt. A copy of the public registry as it relates to the application is made available at the hearing.

1.9. Parties prepare for public hearing

Following the deadline for the exchange of written interventions, the Board generally schedules a time period for parties to review interventions and prepare for the public hearing. This time period is typically a minimum of 15 days.

1.10. NWB holds public hearing

Hearings usually take place in person, but may occur via teleconference, or in writing.

The Board may consider a written hearing for applications that elicit limited public concern and issues with a relatively low level of complexity which can be dealt with in a written format. While written hearings require less travel and may be less costly than in-person hearings, they do not necessarily require less time. The general process of exchanging information, questioning and responding in an orderly manner through written correspondence can cause a written hearing to take more time than an oral hearing. Typically a written hearing will take six (6) weeks to complete. If a written hearing is contemplated, the Board will issue specific direction in its PHC decision.

The purpose of the public hearing is to provide an open public forum for the discussion of the application in front of the Board. Interested parties, including members of the public, are identified and introduced, the application and interventions are presented, and questions are asked and directed in an orderly fashion.

Typically, unless there are outstanding issues, at the end of the public hearing, the Board will close its record, meaning that no new evidence or information is permitted for the

Board's consideration in making a decision.

Significantly, the hearing gives due regard and weight to the opinion of Elders and community members, Inuit culture and knowledge, and to the tradition of Inuit oral communication and decision making.

For further details on the hearing proceedings and format, refer to the NWB's *Rules of Practice and Procedure for Public Hearings*.

1.11. NWB issues decision to Minister

Following the public hearing the Board will issue its decision to the Minister of Indian and Northern Affairs Canada (INAC) for approval. The Board typically issues its decision within 30-45 days following the closing of the hearing, however the length of time to issue its decision depends upon the complexity of the project, as well as the number of other applications requiring the attention of the Board.

The Board will not issue its decision if issues respecting the following have not been resolved:

- a) Any waste produced by the undertaking will be treated and disposed of in a manner that meets water quality and effluent criteria;
- b) The applicant, taking into account its past performance, is financially capable of managing the undertaking, which must consider the mitigation of any possible adverse impacts (i.e. spills, erosion problems) as well as the restoration of the site upon closing or abandonment of the undertaking. The Applicant may be required to provide security payable to the Receiver General of Canada to ensure the liability for reclamation is minimized;
- c) The proposed undertaking will not have an adverse effect on existing or other water users, or waters flowing through IOL as described in the NWB's *Guide 4 – Completing and Submitting a Water Licence Application for a New Licence*, part 1, section 5, Blocks 17 and 18. If an adverse effect to such other water users or water flowing through IOL is anticipated, the NWB must be satisfied that compensation measures have been addressed as described in the NWB's *Guide 4 – Completing and Submitting a Water Licence Application for a New Licence*, part 1, section 5, Blocks 17 and 18.

1.12. Minister issues approval

The time required for approval by the Minister of INAC is 45 days. This time may be extended for a further 45 days if the Minister notifies the Board of the extension within the first 45 days. If the Minister does not respond within this time period, the Minister is deemed to have approved the Board's decision.

Once the Minister has made its decision on whether to approve the NWB decision, the Minister sends a copy of its decision and, in the case of a decision to withhold approval, the reasons for the decision, to the Board, the applicant, and if required to the DIO and any other person with a right to compensation.

Applicants are advised to consider the timeframe associated with the Minister's decision when planning work schedules.