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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYIT
OFFICE DES EAUX DU NUNAVUT

By Email

File No. 2AM-JER0410

Date: July 4, 2011

To: Distribution List

Subject: **2AM-JER0410 Water Licence Renewal Pre-Hearing Conference Decision**

On June 24, 2011 the Board approved this Pre-Hearing Conference Decision along with the procedural direction for the Public Hearing dated October 12-13, 2011 for the above noted file and asked that I convey the following information in that regard.

On March 30, 2011, the Nunavut Water Board (NWB or Board) directed that in accordance with Rule 14 of the *NWB Rules of Practice and Procedure* (the Rules), the staff of the NWB hold a Pre-Hearing Conference (PHC) for the water licence renewal application of Shear Diamonds (Nunavut) Corp. for the renewal of Type A Water Licence 2AM-JER0410 (Application).

Following a Technical Meeting (TM), held on June 20, 2011, which included a Community Meeting, the PHC was held on June 21 in Cambridge Bay, Nunavut. As set out in Rule 14.1 of the Rules, the PHC dealt with the following matters relevant to the Application:

- 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 the 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 TM/PHC Agenda is provided as Appendix A.

Introduction and Registration

The following parties were present, in person, at the PHC: Shear Diamonds (Nunavut) Corp. (SHEAR), Aboriginal Affairs and Northern Development Canada (AANDC, formerly Indian and Northern Affairs Canada INAC); the Kitikmeot Inuit Association (KIA) and the Nunavut Impact

Review Board (NIRB). The following parties provided written comments in advance of the PHC, but did not appear in person or via teleconference at the PHC: Environment Canada (EC) and Fisheries and Oceans Canada (FOC).

A list of participants is provided in Appendix B.

1.0 Application to the Board

On December 22, 2004, the NWB issued NWB1JER0410 (the Original Licence), a Type “A” mining and milling licence for the Jericho Diamond Mine Project which was issued to Benachee Resources Inc, a wholly-owned subsidiary of Tahera Diamond Corporation, to authorize the use water and deposit of waste in relation to the operation of the Jericho Diamond Mine located approximately 260 km southeast of the community of Kugluktuk and 30 km northwest of the Lupin Mine. The Minister subsequently approved the issuance of the Licence on January 25, 2005.

Construction of the Jericho Mine began in March 2005 and commercial production was achieved on July 1, 2006. Between July 1, 2006 and the mine going into receivership in 2008, the Jericho Mine as operated by Tahera Corp., produced 780,000 carats of gem-quality diamonds from 1.2 million tonnes of kimberlite. The mine has not been operating since 2008 and is currently in care and maintenance.

On June 9, 2009, the Licensee applied to assign the Type A Water Licence (now renumbered) 2AM-JER0410 (the Licence) from the Licensee to a new entity, Benachee Resources Inc. (no longer a wholly owned subsidiary of Tahera Diamond Corporation). On July 31, 2009, the NWB authorized the assignment of the water licence to the new licensee, Benachee Resources Inc. The assignment required the submission of numerous outstanding requirements of the Licence including:

- outstanding water use fees
- 2008 annual report
- as-built drawings
- updates of the Spill Contingency Plan and General Monitoring Plan
- an updated estimate of the total mine closure restoration liability; and
- confirmation that security in the amount of \$2.2 million was furnished

On July 27, 2010, during court proceedings in relation to the Tahera receivership (Court File No. 08-CL-7355), the Ontario Superior Court of Justice approved the sale of Tahera’s assets including the Jericho Diamond Mine to Shear Minerals Ltd. In addition, the order of the Honourable Justice Morawitz directed the NWB to consider the application for assignment of the Existing Licence “forthwith”. After a period of due diligence, the purchase by Shear Minerals Ltd. was completed at the end of August, 2010.



On November 15, 2010, the NWB received an assignment request under s. 44 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSTRA)¹ and associated documentation from Shear Minerals Limited, who requested the assignment of Licence 2AM-JER0410 from Benachee Resources Inc. to Shear Diamonds (Nunavut) Corp., a wholly owned subsidiary of Shear Minerals Ltd. As the Licence was set to expire on December 31, 2010, Shear Diamonds (Nunavut) Corp. also included with the assignment application a request that the Board consider exercising their discretion under s. 174(1)(a)(iii) of the NWNSTRA,² which allows the NWB to grant a short-term renewal (up to a maximum of sixty (60) days) of an existing licence. On November 17, 2010, mindful of the Court's order in July, 2010 and the upcoming expiry of the Licence, the NWB determined that the current circumstances of SHEAR's application constituted "urgent circumstances" pursuant to subsection 55(4) of the NWNSTRA.³ As a result, the Board's decisions in respect of the application, both the assignment and the short term renewal of the Licence by a period of up to sixty (60) days without a hearing, were subject to a shortened notice period (reduced from the usual thirty (30) day minimum time period for public comment, to a ten day minimum time period).

On December 2, 2010, the NWB assigned the Licence to SHEAR and requested that the Minister approve the assignment. In addition, the Board issued a sixty (60) day short-term renewal of the Licence. The assignment and short-term renewal were approved by the Minister on December 21, 2010.

On January 31, 2011, SHEAR requested an amendment to alter the term of the Water Licence from March 1, 2011 to March 1, 2012 to be processed without a hearing on an emergency basis pursuant to s. 174(1)(a)(ii) of the NWNSTRA⁴ and s. 55(4)⁵. In the amendment request, SHEAR identified a number of issues at the mine site that could cause environmental impact, if left unattended. At that time, a Care and Maintenance Plan was submitted with the request for amendment for the review of the Board.

In addition, the following documents were included with the Care and Maintenance Plan:

¹ Section 44 of the NWNSTRA states that: (1) A sale or other disposition by a licensee 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. (2) 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. (3) Except as provided in this section, a licence is not assignable.

² Subsection 174(1)(a)(iii) of the NWNSTRA states that the following class of application in respect of a Type A licence is exempted from the requirement of a public hearing: (iii) one or several renewals of a total duration not exceeding sixty days.

³ Subsection 55(4) of the NWNSTRA states:

55(4) Where a public hearing is not held in relation to an application, the Board shall not act on the application until at least thirty days notice of the application that has been published under subsection (1) unless, in the opinion of the Board, there are urgent circumstances that justify the Board acting on that application in a shorter period, but that shorter period shall not be less than ten days.

⁴ Subsection 174(1)(a)(ii) states that the following class of application in respect of a Type A licence is exempted from the requirement of a public hearing: any amendment that affects the use, flow or quality of waters or alters the term of the licence, where the Nunavut Water Board, with the consent of the Minister, is of the opinion that an emergency exists that requires the amendment.

⁵ As provided in footnote 3.



- Site Water Management Plan
- PKCA (Processed Kimberlite Containment Area) Management Plan
- General Monitoring Plan; and
- Aquatic Effects Monitoring Plan

In addition, a Contingency Management Plan was submitted with the Care and Maintenance Plan submission, in fulfillment of the assignment conditions and Part J, Item 4 of the Licence.

On February 21, 2011, the NWB issued the amendment to Licence 2AM-JER0410 to provide for the renewal of the Licence for one year without a public hearing. There were no other changes to the terms and conditions of the Licence. The Minister approved the amendment to the term of the Licence on March 1, 2011. On this basis, the Licence expires on March 1, 2012.

On February 28, 2011, SHEAR submitted a Type “A” water licence renewal application for the Jericho Mine. The following updated plans were included with the renewal application:

- C1 Diversion Construction Summary;
- Fuel Storage Containment Facility Design Plan;
- Preliminary Landfill Design Plan;
- Landfill Management Plan;
- Preliminary Landfarm Design Plan;
- Landfarm Management Plan;
- Contingency Management Plan;
- Wastewater Treatment Management Plan;
- Operations, Maintenance and Surveillance Manual - PKCA Dams;
- Emergency Preparedness and Response Plan for Dam Emergencies;
- Waste Management Plan;
- Waste Rock Management Plan;
- Interim Closure and Reclamation Plan; and
- 2011 Pit Dewatering Plan Addendum to the PKCA Management Plan (May 2011)

On March 21, 2011, the NWB acknowledged receipt of the Application and asked interested persons to review the scope and completeness of information provided, as well as to identify deficiencies. This response was originally requested by the NWB to be submitted to the Board by April 21, 2011, but at the request of some parties, the comment period was extended to April 29, 2011.

As identified previously to the parties, pursuant to s. 39(1) of the NWNSRTA, the NWB may not issue, renew, or amend a licence until the NIRB has completed the screening, reconsideration or, where a review is required, has issued a new project certificate.⁶ However, recognizing the

⁶ Section 39(1) states: (1) The Board may not issue, amend or renew a licence to use waters or deposit waste where the use or deposit, or in the case of an amendment any change to the use or deposit, or the appurtenant undertaking requires screening in accordance with Part 4 of Article 12 of the Agreement, until the Nunavut Impact Review Board has completed the screening and, where a review under Part 5 or 6 of that Article is required, issued a project certificate referred to in section 12.5.12 or 12.6.17 of the Agreement.



direction of the Courts to the NWB in processing this application, the Board has consulted with the NIRB and is processing the renewal application while the NIRB continues to provide advice and direction regarding their pre-licensing requirements.

On May 11, 2011, based on the comments received from AANDC, EC, DFO and KIA and discussions with the NIRB, the NWB determined that the Application could proceed to the next steps in the NWB's regulatory process and, in accordance with section 55(1)⁷, invited interested persons to complete a full technical assessment of the Application, making representation to the NWB by June 10, 2011 (this deadline was extended to June 13, 2011 at the request of AANDC).

On March 30, 2011, under Motion 2010-30-10, the Board (Jericho Panel) directed the NWB staff to hold a Technical Meeting and Pre-hearing Conference (PHC) in Cambridge Bay, June 20-21, 2011. By June 14, 2011, the Board was in receipt of written representations from AANDC, EC and DFO. On June 14, the NWB provided follow-up notice of the Technical Meeting and Pre-Hearing Conference, inviting parties to confirm their acceptance of proposed agenda and their attendance by June 16, 2011. By the deadline of June 16, 2011, the NWB had received confirmation of attendance by AANDC and the KIA.

All submissions received have been placed on the Board's public registry and are available from the NWB's ftp site using the access username of "public" and the password of "registry" (without the quotes) at the following link:

<ftp://nunavutwaterboard.org/1%20PRUC/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-JER0410/2%20ADMIN/4%20HEARINGS/1%20PREHRG%20TECH%20MTG/>

2.0 Technical Meeting

The Technical Meeting (TM) provided an informal meeting with all parties, including interested community members, to discuss issues raised during the technical review of the Application. The purpose of the TM was to informally resolve technical matters between interested parties and the applicant prior to the Pre-Hearing Conference (PHC), particularly those matters that could affect the Board's determination of any PHC issues. Given the informal and technical nature of the meeting, the NWB Board members were not present and the meeting was facilitated by NWB staff.

During the TM, SHEAR presented a written response to the issues raised in the written submissions of the parties, which is provided in Appendix C. Unfortunately, as three of the parties with a stated interest in the renewal application did not attend the TM or PHC (EC, FOC and the Government of Nunavut Department of Environment (GN DOE)), the NWB could not confirm with all parties that their concerns were fully and adequately addressed by the written responses of SHEAR in their response document tabled at the TM. Consequently, by way of a

⁷ 55. (1) The Board shall give notice of every application in relation to a licence to the council of each municipality in the area affected by the application and shall publish 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. The notice shall invite interested persons to make representations within a specified period and shall advise them of the consequences, as provided in section 59 and subsection 60(2), of any failure to respond to the notice.



letter to all the parties, provided in Appendix D, the NWB on June 22, 2011, requested that all parties, including those who had submitted comments, but who did not attend the TM/PHC, review SHEAR's written responses and by June 29, 2011 indicate whether they are satisfied that the responses provided by SHEAR adequately address their concerns and questions raised during the technical review and confirm that there are no issues that would preclude the NWB from proceeding to a Hearing on this matter.

The NWB notes that the absence of several parties at the TM/PHC in this case, created an additional administrative burden as the Board was unable to confirm the issues and commitments directly with all parties during the TM/PHC. The Board wishes to remind all interested parties that pursuant to s. 52(2) of the NWNSRTA⁸ if interested persons do not express an interest in participating at the hearing by the tenth day prior to the day of the proposed hearing, the Board may, at the request of the applicant or licensee, dispose of the matter without a public hearing. The Board's work and the regulatory process are severely hindered by a lack of participation by interested parties, and the Board strongly encourages their full participation during the renewal application TM/PHC and hearing.

During the TM, the NWB staff compiled a list of commitments made by the various parties that was carried forward to the discussions in the PHC and is attached as Appendix E.

Community Session

To promote public awareness and participation in the Application, the NWB held a community session of the TM on the evening of June 20, 2011 for the residents of Cambridge Bay, Nunavut to express any concerns about the Application and ask questions of the Applicant and the other parties. Three (3) additional participants attended the evening session as members of the community. The full list of attendees is provided in Appendix F.

The NWB commenced the Community Session with a brief presentation about the status of the Application and the Water Board's process. SHEAR then followed the NWB's presentation by providing an overview of the company's proposed plans and activities for the site.

Following the presentation, community members raised the following issues:

- (1) identifying that much of the community was engaged in traditional activities on the land (such as fishing) at the time of the TM/PHC;
- (2) identifying that the dates for the Hearing of this matter should not be contemplated in the months of June, July and August;
- (3) inquiring as to SHEAR's plans to support the youth in the community via education, training and employment; and
- (4) inquiry about the NWB's process and timing (how long will the Licence renewal process take and where is the Application in relation to this).

⁸ Section 52(2) states: A public hearing need not be held (a) if the applicant or licensee consents in writing to the disposition of a matter without a public hearing, provided that no other person informs the Board by the tenth day before the day of the proposed hearing of the person's intention to make representations;



SHEAR's presentation has been placed on the Board's public registry and is available from the NWB's ftp site using the access username of "public" and the password of "registry" (without the quotes) at the following link:

<ftp://nunavutwaterboard.org/1%20PRUC/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-JER0410/2%20ADMIN/4%20HEARINGS/1%20PREHRG%20TECH%20MTG/>

3.0 Pre-Hearing Conference

As outlined above, on June 21, 2011, the Board staff facilitated the PHC. The purpose of the PHC was to deal with the 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 the hearing; and
- f. Any other matters that may aid in the simplification and disposition of the application at the Hearing, such as site visits.

a. The Timetable for the Exchange of Information

The parties agreed that the staff would recommend final dates for the Hearing. SHEAR was advised that they must file all new information associated with the Application a minimum of forty five (45) days prior to the Hearing, or as set by the Table of Commitments, to allow for an adequate review period by all parties. In addition, as confirmed at the PHC and as required under the Licence Part B, Item 6, SHEAR is required to provide executive summaries of their application materials translated into Inuktitut and Inuinnaqtun. The NWB looks forward to the submission of these executive summaries along with the specific commitments, no later than **August 15, 2011**.

For all interested parties, all written submissions must be provided at least fifteen (15) days prior to the Hearing (as set out in Rule 12.4), including executive summaries in English and translated into Inuktitut and Inuinnaqtun as required by Rule 12.5.

On this basis, the Board requests **that the written submissions of interested parties, complete with an executive summary in English, Inuktitut and Inuinnaqtun, be filed with the Board no later than 3:00 p.m. Mountain Time, Friday, September 23, 2011**. In order to facilitate the NWB's review of interventions, the Board requests that submissions be generally classified in accordance with the list of issues provided by the Board as outlined below.

In addition, the parties and Applicant are advised to comply with the dates for provision of information listed specifically in the Table of Commitments provided in Appendix E in order to maintain the review schedule. Failure of the Applicant to provide the information required to complete the technical review on time, as indicated in the Table of Commitments, may result in



the Board rescheduling the public hearing, which will require providing subsequent notice in accordance with s. 55(2) of the Act⁹.

All submissions will be posted on the NWB's ftp-site (<ftp://nunavutwaterboard.org/>) and in the public registry upon receipt. A copy of the public registry as it relates to the Application will be available at the Hearing.

b. The List of Issues

The parties discussed the detailed technical issues as set out in SHEAR's response to the comments of interested parties in Appendix C. In addition, various commitments were agreed to by the parties on these matters as set out in Appendix E, Pre-Hearing Commitments.

All parties in attendance confirmed that, provided the commitments in Appendix E are met, there are no technical issues or related information requirements that would prevent the Board from proceeding with the Hearing.

Based on the Application, the prior written submissions of the parties and the information exchanged at the TM/PHC, the NWB staff identified the following as issues to be addressed at the Hearing:

- water use;
- water management (including discharge criteria);
- waste management and waste management plans;
- modifications;
- contingency planning;
- general and aquatic effects monitoring;
- closure and reclamation;
- security;
- water compensation; and
- such other issues as may be identified by the parties or the public.

As indicated by the Board at the TM/PHC, the Board encourages the parties and technical experts to work together to resolve as many issues as possible prior to the Hearing. Should further meetings take place, the Board asks that it be advised by joint submission of any agreement that is reached on outstanding issues.

c. Identification of Interested Parties

A complete list of interested parties that attended the TM/PHC is set out in Appendix B. The parties providing written submissions during the technical review are as set out above under the

⁹ Section 55(2) states: Where the Board decides or is required under this Part to hold a public hearing, it shall give notice, in the manner described in subsection (1), at least sixty days before the commencement of the hearing, of the place, date and time of the hearing. The place, date and time of the hearing shall be chosen and the notice published by the Board in a manner that promotes public awareness and participation in that hearing.



heading “Introduction and Registration”. At the TM/PHC, the following parties confirmed that they would be making a presentation at the public hearing:

- SHEAR
- KIA
- AANDC

Additional parties identified as potentially having an interest in the Hearing included:

- Environment Canada
- Fisheries and Oceans Canada
- Nunavut Tunngavik Inc.; and
- Government of Nunavut (Public Health, Occupational Health and Safety, Environment)

The NWB will issue formal public notice of the Hearing, as required under s. 55(2) of the Act, and will also provide specific notice to a broad distribution list including the parties identified above.

d. The Desirability of Amending an Application For the Purpose of Clarification

The parties determined that no amendments to the Application were required.

e. Procedures for the Hearing

In order to facilitate public participation and to accommodate language requirements of Board members and the community, the Hearing will be simultaneously translated in Inuktitut and Inuinnaqtun. **Should the parties require additional language services please advise the NWB no later than September 23, 2011.**

The NWB will also provide for a stenographer to record the Hearing and produce final transcripts for the public registry.

The Board thanks the parties for their agreement to provide sufficient photocopies of submission materials and presentations, to be presented at the Public Hearing for the Board, staff, parties and a reasonable number for the general public that may be in attendance.

f. Any Other Matters

The parties discussed that due to procedural fairness and feasibility concerns, that a site visit by the Board would not be part of the Hearing of this matter. Site visits by interested/intervening parties may be arranged through cooperation with the Applicant.



4.0 Hearing

The Board has decided the following matters in respect of the Hearing:

a. Date, Time and Location

Based on the feedback regarding suitable dates provided by the parties at the TM/PHC, **the NWB shall hold a Hearing on the Application starting Wednesday, October 12, 2011 at 8:30a.m., and ending Thursday, October 13, 2011, at the Community Hall in the Community of Kugluktuk, Nunavut.**

b. Order of events

The Board hereby confirms that the Hearing will proceed by party intervener as opposed to by issue. The Board will follow the order of events as outlined in section 20.1 of the Rules.

c. Equipment

Parties who need special audio-visual equipment at the Hearing are requested to inform the NWB of their specific needs within their written submissions to the Board due no later than September 23, 2011, so that arrangements can be made in advance of the Hearing.

If you require additional information, please do not hesitate to contact Dave Hohnstein, Director of Technical Services at dts@nunavutwaterboard.org for technical issues, or Phyllis Beaulieu at licensing@nunavutwaterboard.org for any other matter related to the Hearing.

Regards,

Original signed by:

David Hohnstein, C.E.T.
Director Technical Services

Attachments:

Appendix A: Technical Meeting and Pre-Hearing Conference Agenda
Appendix B: List of Participants at the Technical Meeting and Pre-Hearing Conference
Appendix C: SHEAR Table of Responses to Technical Issues
Appendix D: Letter of David Hohnstein (NWB) to Pamela Strand (SHEAR), dated June 22, 2011
Appendix E: Table of Pre-Hearing Commitments
Appendix F: Community Session List of Attendees





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APPENDIX A

PROPOSED AGENDA

TECHNICAL MEETING PRE-HEARING CONFERENCE JERICHO PROJECT TYPE “A” WATER LICENCE RENEWAL APPLICATION JUNE 20-21, 2011

Date: June 20, 2011

Time: 8:30 AM

Location: Cambridge Bay Community Hall

1. Introduction and Registration
2. Application to the Board
3. Purpose of the Pre-Hearing/Technical Meeting
4. Pre-Hearing Review of the Application
 - a. Shear Diamonds (Nunavut) Corp’s presentation on the current status of the Project
 - b. Identification of Interested Parties
 - c. Presentations from Interested Parties
 - d. Formulation of Issues
 - e. Identification and Service of Documents to Parties (deadline, public registry, form)
 - f. Translation and the Record (language, transcripts)

Date: June 20, 2011

Time: 19:00-21:00 PM

Community session

Pre-Hearing Conference

Date: June 21, 2011

Time 08:30 AM

Location: Cambridge Bay Community Hall

1. Hearing
 - a. Date, Time and Location
 - b. Order of Events
 - c. Equipment
2. Other Issues
3. Closing of the Meeting

