



SUBMISSION OF THE KITIKMEOT INUIT ASSOCIATION

FOR SHEAR DIAMONDS (NUNAVUT) CORP.

JERICO WATER LICENCE RENEWAL APPLICATION (NWB1JER0410)

NOVEMBER 15, 2011

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EXECUTIVE SUMMARY

The Kitikmeot Inuit Association (KIA) is pleased to submit this intervention to the Nunavut Water Board (NWB) in the Shear Diamonds (Nunavut) Corp. (Shear) Jericho Diamond Mine Project (Jericho Mine) Water Licensing Renewal Application proceeding. The KIA is the representative of Kitikmeot Inuit and is the owner of Inuit Owned Land (IOL) Parcel CO-05, upon which approximately forty percent (40%) of the Jericho Mine footprint is located. The KIA is also the Designated Inuit Organization (DIO) for the Kitikmeot Region for purposes of Article 20 of the Nunavut Land Claim Agreement (NLCA) and has both water rights and management authorities on IOL. The rights and interests of Kitikmeot Inuit and the KIA are directly affected by this mining project and Shear's application.

The KIA negotiated and signed an Inuit Impact and Benefits Agreement (IIBA) for the Jericho Mine with Tahera Diamond Corporation in 2004. This agreement was assigned to Shear when it purchased the Jericho Mine in 2010. Until Shear resumes production, only the employment and contracting provisions of the IIBA are in force.

There is a Water Compensation Agreement in place between Shear and the KIA, as a Schedule to the IIBA. That Agreement was negotiated under the provisions of Article 20 of the NLCA. The KIA and Tahera signed this Agreement in 2004 at the same time as the IIBA. Shear's water compensation payments to the KIA are current until the end of 2011. The KIA has no issues related to water compensation in relation to Shear's Renewal Application.

Shear and the KIA also have a surface land lease for the portion of the Jericho Mine which is located on IOL. The KIA holds reclamation security for the Jericho Mine through its surface lease with Shear. This security protects the environment and Inuit Owed Land and is intended to ensure that proper closure and reclamation of IOL takes place. For the purposes of this Water Licence Renewal Application, the KIA has no issues in relation to closure and reclamation security in relation to the portions of IOL Parcel CO-05 that are part of the Jericho Mine footprint.

Long standing practice in estimating closure and reclamation costs as well as AANDC's 2002 Mine Site Reclamation Policy for Nunavut have assumed that clean up will be conducted by a third party and have estimated costs accordingly. When protecting IOL for Inuit Beneficiaries, the KIA policy is to hold full security based on the best evidence available. Shear needs to be fully secured and the KIA has an agreement with Shear to ensure that.

On matters related to the Water Licence terms, the KIA recommends the following:

1. **Closure and Reclamation Security** – The KIA will continue to hold land-related reclamation security for IOL under the KIA's surface lease with Shear.
2. **Water Compensation** – The KIA has a Water Compensation Agreement in place with Shear as part of the IIBA between the KIA and Shear.

Shear should be required to confirm to the Board in its annual reporting under the Water Licence that water compensation payments under this Agreement with the KIA are up to date.

3. **Closure and Reclamation Plan** - The KIA is directly affected by the Plan for Closure and Reclamation of those portions of the Jericho Mine which are on IOL.

The Plan should continue to address facilities and activities on IOL. This will avoid duplication of processes under the KIA lease. The KIA will continue to provide input on Shear's Closure and Reclamation Plan in the future as part of the NWB's process.

4. **Term of the Water Licence** – Shear has requested a term of 10 years. The KIA suggests that the term should be 5 years.

1. Introduction

The Kitikmeot Inuit Association (the KIA) is pleased to make this submission to the Nunavut Water Board (NWB) outlining the results of its review of the Shear Diamonds (Nunavut) Corp. (Shear) Jericho Diamond Mine Project (Jericho Mine) Water Licensing Renewal Application.

The KIA is the representative of Inuit Beneficiaries of the Nunavut Land Claims Agreement (NLCA) in the Kitikmeot Region. The KIA Board includes representatives elected from all Kitikmeot Communities. The KIA is the Regional Inuit Association (RIA) for the Kitikmeot Region and exercises authorities related to its ownership of land and to matters assigned to RIAs or delegated to the KIA as a Designated Inuit Organization (DIO) under Article 39 of the NLCA. In this case the most relevant designation is under Article 20 in relation to Inuit water rights.

Consistent with the NTI Mining Policy for Nunavut, the KIA encourages and supports mining development that benefits Kitikmeot Inuit while protecting the land, water and wildlife upon which we depend.

As the NWB may be aware, Tahera Diamond Corporation (Tahera) and the KIA negotiated and signed an Inuit Impact and Benefits Agreement (IIBA) in September 2004. This IIBA is currently partly in effect between Shear and the KIA. Until Shear resumes production, only the employment and contracting provisions of the IIBA are in force. As part of the IIBA, the KIA and Tahera negotiated and signed a Water Compensation Agreement to address the impact of the Jericho project on Inuit land and water rights under Article 20 of the NLCA and on the rights set out in the *Nunavut Waters and Surface Rights Tribunal Act (NWNSRTA)*.¹ Shear's water compensation payments to the KIA are current until the end of 2011.

The KIA does not have any compensation concerns in respect of either Article 20 of the NLCA or under the *NWNSRTA*.

The KIA has carefully reviewed the evidence submitted by Shear and other parties in this proceeding. We have set out our position on the water licence application below and we provide details to support the KIA position in the parts of our presentation which follow. After setting out our position, the KIA provides its recommendations to the NWB in relation to the water licence. We trust that our submissions will be of assistance to the NWB.

2. KIA Mandate

The KIA is the RIA for the Kitikmeot region of Nunavut. The KIA is responsible for the implementation of those parts of the NLCA assigned directly to the RIA or assigned by Nunavut Tunngavik Incorporated to the KIA as a Designated Inuit Organization (DIO). As the RIA, the KIA is the owner of surface IOL in the Kitikmeot Region, including parcel CO-05, upon which a significant proportion (40%) of the Jericho Mine's infrastructure and storage areas were built. The KIA is also the DIO for purposes of Article 20 of the NLCA.

The KIA is involved in surface land management, including licensing and leasing on its lands. The KIA and Shear have a commercial lease in place for the Jericho Mine, #KTCL305D001.

¹ **S.C. 2002, C 10. SEE SECTIONS 11 AND 60.**

The lease was signed on June 7, 2005 and has a term of 10 years. The lease addresses security requirements and the eventual abandonment and reclamation of the site.

The KIA has rights which require the protection and management of water in, on or flowing through IOL, pursuant to Article 20 of the NLCA. A Nunavut wide Water Policy has been developed by NTI and the RIAs to address Article 20 rights and responsibilities and to manage water on IOL.

The KIA also has special interests on IOL and elsewhere related to wildlife and fisheries. Kitikmeot Inuit are primary users of the fisheries and wildlife resources and they have preferential harvesting rights set out in Article 5 of the NLCA. Disruption of Inuit harvesting activities will give rise to compensation under Article 6 of the NLCA. Thus, the KIA's interests in the effects of the proposed Jericho Mine are unique and go beyond those of a landowner and of many government agencies.

3. KIA Role in the Regulatory Proceeding

The KIA provides this written submission to the Board for its consideration in the proceeding and the KIA will appear at the hearing to be held in Kugluktuk on November 30th and December 1st, 2011. The KIA has reviewed the Application and other documents submitted to the Board and this is the basis of our current submission. The KIA has actively participated in the NWB processes to date, including participating in the Technical Meeting and Pre-Hearing Conference on Shear's Water Licence Renewal Application for the Jericho Mine.

The KIA has also cooperated with other regulatory agencies, whenever approached, regarding issues related to abandonment and reclamation of the Jericho Mine.

4. KIA Position on the Water Licence Renewal Application

The KIA generally supports Shear's Jericho Mine Water Licence Renewal Application. However, the KIA provides these submissions on several areas related to the Application. These are:

- Closure and Reclamation Security
- Water Compensation
- Closure and Reclamation Plan
- Term of the Water Licence

These issues are discussed below.

5. Closure and Reclamation Security

One of the statutory requirements for a water licence renewal is a reassessment of the reclamation liability. The NWB is not able to renew a licence unless Shear satisfies the NWB under s. 57 of the *NWNSRTA* of several issues set out below:

57. The Board may not issue a licence unless the applicant satisfies the Board that

...

(b) the financial responsibility of the applicant, taking into account the applicant's past performance, is adequate for

(i) the completion of the appurtenant undertaking,

(ii) such measures as may be required in mitigation of any adverse impact, and

(iii) the satisfactory maintenance and restoration of the site in the event of any future closing or abandonment of that undertaking.

(emphasis added)

Both the KIA and the Crown hold reclamation security from Shear for the Jericho Mine. The KIA takes security through its surface lease to protect Inuit interests and land. The lease between the KIA and Shear for the Jericho Mine addresses security requirements and the eventual abandonment and reclamation of the site. The KIA will continue to hold land-related reclamation security for IOL under the KIA's surface lease with Shear. In holding reclamation security, the KIA wants to ensure that Inuit interests are completely protected and that it has the full amount of security required to reclaim the IOL that is leased by Shear for the Jericho Mine. Shear needs to be fully secured and the KIA has an agreement with Shear to ensure that.

6. Water Compensation

The KIA negotiated and signed an Inuit Impact and Benefits Agreement (IIBA) for the Jericho Mine with Tahera Diamond Corporation in 2004. This agreement was assigned to Shear when it purchased the Jericho Mine in 2010. Until Shear resumes production, only the employment and contracting provisions of the IIBA are in force.

There is a Water Compensation Agreement in place between Shear and the KIA, as a Schedule to the IIBA. That Agreement was negotiated under the provisions of Article 20 of the NLCA. The KIA and Tahera signed this Agreement in 2004 at the same time as the IIBA. Shear's water compensation payments to the KIA are current until the end of 2011. The KIA has no issues related to water compensation in relation to Shear's Renewal Application.

However, the KIA suggests that Shear should be required to confirm to the Board in its annual reporting under the Water Licence that water compensation payments under this Agreement with the KIA are up to date.

7. Closure and Reclamation Plan

The KIA is always extremely interested in the closure of projects and the reclamation of IOL. The KIA will provide input on Shear's Closure and Reclamation Plan as the plan becomes more reflective of closure conditions at the mine site. As Shear states in its Executive Summary of the Interim Closure and Reclamation Plan:

The ICRP is a concept level document, subject to review and modification, based on ongoing mine development, observational data and the results of progressive reclamation. It is a living document that will be updated and modified as mining progresses.

Shear also states in that same Executive Summary:

Section M, Part 5 of the water licence requires that a final closure and reclamation plan be submitted at the time of water licence renewal; however, this project has been on care and maintenance since June of 2008 and was acquired by Shear Diamonds Ltd. (Shear) in August 2010. For this reason, this plan is being submitted as an interim plan until such time as Shear has determined the fate of the project.

However, "until such time as Shear has determined the fate of the project" is not very specific. It gives Shear lots of leeway on when it must submit a final Closure and Reclamation Plan. The KIA feels that the Board should place some limit on this time. The KIA suggests that Shear should provide the final Closure and Reclamation Plan within 2 years from the date the Water Licence is issued.

The Plan should continue to address facilities and activities on IOL. This will avoid duplication of processes under the KIA lease. The KIA will continue to provide input on Shear's Closure and Reclamation Plan in the future as part of the NWB's process.

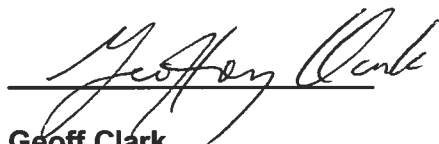
8. Term of the Water Licence

Shear has requested a water licence term of 10 years. The KIA suggests a 5 year term for the licence. Previously the water licence for the Jericho Mine was for a 5 year term which worked well, given the anticipated life of the Mine. The KIA feels it would be important to have a water licence renewal hearing partway through life of the Mine. This would provide an opportunity to the NWB, the KIA and other parties to review Shear's closure and reclamation plan and other issues at that time.

9. Conclusion

The KIA supports appropriate mining development. We acknowledge that Shear has been working hard to get the Jericho site back into compliance. The KIA generally supports Shear's Application for Renewal of its Water Licence. As stated in these submissions, the KIA has no issues related to either water compensation or closure and reclamation security on IOL.

All of which is respectfully submitted this 15th day of November, 2011 on behalf of the KIA:



Geoff Clark
Director Lands and Environment, KIA