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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

File No: 2AM-JER0410

February 21, 2011

Honorable John Duncan, P.C., M.P.
Minister of Indian Affairs and Northern Development
And Federal Interlocutor for Metis and Non-Status Indians
21st Floor, 10 Wellington
Gatineau, Quebec K1A 0H4

Subject: Application by Shear Diamonds (Nunavut) Corp, seeking an Amendment to extend the expiry of the term of Type A Water Licence 2AM-JER0410 from March 01, 2011 to March 1, 2012

Dear Minister:

This letter is a request by the Nunavut Water Board (NWB or the Board), seeking your consent to the NWB's exercise of its jurisdiction to issue an amendment to extend the term of Water Licence 2AM-JER0410 (the Water Licence) from March 1, 2011 to March 1, 2012. No other changes to the conditions of the Water Licence were requested or have been granted under this amendment. This amendment to the term was granted on an emergency basis without a public hearing pursuant to s. 174(1)(a)(ii) of the *Nunavut Waters and Nunavut Surface Right Tribunal Act* (NWNSTRA).¹

Further, given the urgency associated with this application and the imminent expiry of the Water Licence, the notice period for this amendment was abridged by the Board from the usual thirty (30) day review period to a minimum time period of no less than ten (10) days as the Board determined that "urgent circumstances" existed pursuant to s. 55(4) of the NWNSTRA².

¹ 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.

² Subsection 55(4) states that: 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.

Background and Regulatory History:

On December 21, 2004, the NWB issued licence NWB1JER0410 (the Original Licence), authorizing Benachee Resources Inc. a wholly owned subsidiary of Tahera Diamond Corporation to use water and dispose of waste into water in relation to the operation of the Jericho Diamond Mine. The Jericho Diamond Mine is located at the north end of Contwoyto Lake, NU, approximately 200 km southeast of Kugluktuk, 200 km southwest of Bathurst Inlet and 420 km northeast of Yellowknife, NWT. The Original Licence was approved by the Minister of Indian and Northern Affairs Canada on January 25, 2005. The Original Licence was issued for a period of approximately six years with an expiration date of December 31, 2010.

Construction of the mine began in March 2005 and the first production of rough diamonds began during the first quarter of 2006. On July 1, 2006, the commercial production was achieved at the mine, and on August 17, 2006, the mine was officially opened. From July 1, 2006 until the mine went into receivership in late 2008, more than 780,000 carats of diamonds were produced from 1.2 million tonnes of kimberlite. Since 2008 the mine has not been operating 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 Water 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 Board 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.

On November 15, 2010, Shear Minerals Ltd. ("Shear" or "the Company") applied to assign the Licence from Benachee Resources Inc. to Shear Diamonds (Nunavut) Corp., a wholly owned subsidiary of Shear Minerals Ltd., and to renew the Licence for a period of sixty (60) days, commencing on January 1, 2011. On December 21, 2010, the assignment to Shear Diamonds (Nunavut) Corp. was approved and the sixty (60) day short-term renewal of Licence 2AM-JER0410 was issued by the Board and sent to the Minister for approval. The assignment of the Licence and short-term renewal was approved by the Minister on December 31, 2010. The Licence is set to expire on March 1, 2011.

On January 12, 2011, Shear Minerals Ltd. Informed NWB that effective December 23, 2010 Shear Minerals Ltd. officially changed its name to Shear Diamonds Ltd.

The Application:

On January 31, 2011 the NWB received an amendment application from Shear Diamonds (Nunavut) Corp, seeking to extend the expiry date of Water Licence No. 2AM-JER0410 from March 1, 2011 to March 1, 2012. Through its review of the history of the Jericho Mine, site inspection reports and visits to the site in the fall, Shear has become aware of a number of issues that require immediate attention and action on-site during the care and maintenance phase of the project. Shear has prepared a care and maintenance plan for the Jericho Mine that identifies the site water management undertakings required to support the application and that there are a number of issues at the mine site, that if left unattended, have the potential to jeopardize the integrity of engineered structures and cause serious environmental harm. Consequently, the Licensee has asked that the Board process this amendment request without a hearing, on an emergency basis through s.174(1)(a)(ii) of the Act.

Documents pertaining to this application are available from the NWB ftp site (username *public* and password *registry*) at the following link:

<ftp://nunavutwaterboard.org/1%20PRUC/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-JER0410/1%20APPLICATION/2010%20Amendment/>

Mindful of the upcoming expiry of the Water Licence, and based on the information contained in the documents filed in support of the request by Shear, the NWB has determined that “urgent circumstances” do exist in this case, and that an abridged notice period of ten (10) days is appropriate for this Application pursuant to s. 55(4) of the NWNSRTA.

On February 4, 2011, the Board issued a letter of acknowledgement and notice of the abridged time period for comment, and interested parties were invited to review the application and provide comments to the NWB on or before 3:00 pm MST, February 14, 2011. Through its notice of application and distribution of February 4, 2011, the Board informed Shear that, given the time constraints in processing this amendment request, the care and maintenance plan submitted with the application, would not be reviewed and approved at this time, but could only be considered insofar as it relates to the amendment of the term of the Water Licence. However, the Board indicated that the care and maintenance plan will be reviewed for technical content and approval in due course following the issuance of the Board’s decision regarding this amendment request.

By the comment deadline of 3:00 p.m. MST on February 14, 2011, the NWB had received comment submissions³ from Environment Canada (EC), Fisheries and Oceans Canada (FOC) and the Kitikmeot Inuit Association (KIA).

³ Environment Canada submission dated February 14, 2011; Fisheries and Oceans Canada submission, dated February 10, 2011; Kitikmeot Inuit Association submissions dated February 8, 2011, February 10, 2011 and February 13, 2011.

Generally, in their submissions, the interested parties supported the extension of the Licence term expiry date and were looking forward to a review of the submitted care and maintenance plan. FOC did not comment directly on the amendment application. They had however, expressed concerns over the fish habitat compensation measures included in the original Fisheries Act Authorizations and subsequent amended authorization and inquired as to whether they have been completed. FOC requested that Shear Diamonds (Nunavut) Corp provide FOC a detailed summary of the status of all fish habitat compensation activities that have occurred at the mine site to date, including proposed completion dates for any outstanding fish habitat structures that have not been finished and the monitoring as required. However, these measures are not part of the Water Licence and no changes to the Water Licence were requested as a result.

In the KIA's letter dated February 10, 2011, the KIA confirmed that as the amendment request is limited to the term of the Licence and that there are no changes requested to any other Licence condition, they had no comments with respect to the application. Further, the KIA confirmed through the submission dated February 13, 2011, provided by John Donihee, M.E.S., LL.M., counsel for the KIA, that as the proposed amendment was solely extending the term, there are no water compensation issues to be resolved prior to the Board considering the proposed amendment,

There were no comments received from Indian and Northern Affairs Canada (INAC) with respect to this application. However INAC had previously provided their indications of support for the assignment and the short-term 60 day renewal of the Water Licence in their letter to the Board on November 24, 2010. In that letter, INAC also confirmed that Shear Diamonds (Nunavut) Corp. had furnished acceptable security as required by the Licence in the amount of \$2.2 million.

Reasons for Decision:

On February 17, 2011 the NWB considered the application and comments of the parties. On this basis, the Board is satisfied that the amendment to the existing Licence and the operation of the appurtenant undertaking by Shear Diamonds (Nunavut) Corp would not be likely to result in a contravention of any condition of the Licence or any provision of the *Act* or *Regulations*. Further, the Board has determined that the amended term extending the expiry date of the Water Licence by one year will allow the Licensee to carry out the activities proposed in the submitted care and maintenance plan (upon approval of the Board in writing) and that these measures will mitigate the environmental concerns identified in the application and prevent environmental contamination at the mine site as a result. During this amended licence term, the Licensee has committed to providing a full renewal application, expected to be submitted within the next thirty days, allowing adequate time for processing of the renewal in accordance with the Act and the NWB's Rules, including conducting a public hearing.

Based on concerns that if the Water Licence expired before the measures proposed in the care and maintenance plan could be implemented that environmental harm could result, the NWB determined that, in this case, an "emergency" exists pursuant s.174(1)(a)(ii) of the NWNSRTA, that requires an amendment to the term of the Licence without a public hearing. Consequently,

the Board has decided to amend the Licence to provide for a limited one year extension of its term without a public hearing, with the expectation that Shear Diamonds (Nunavut) Corp will submit their complete renewal application as soon as possible and that a public hearing will be conducted in respect of that application.

Reflecting this decision, the Board requests the following from the Minister:

- consent to the NWB's exercise of its jurisdiction to exempt the application for the amendment to extend the term of the licence, from the requirement to hold a public hearing; and
- approval of the amendment of the term of Water Licence 2AM-JER0410 from March 1, 2011 to March 1, 2012, (as attached) with no other changes to the conditions of the Water Licence.

Should you have any questions or require clarification on the above or wish to discuss further, please contact the undersigned in writing.

Sincerely,



Thomas Kabloona
Nunavut Water Board
Chair

Cc: Kitikmeot Distribution List

Attachments;

1. Signature page for the amendment to alter the term of Licence 2AM-JER0410, for one year, expiring March 1, 2012
2. Listing of Application Documents.

List of Application Documents Received:

1. Cover letter dated January 31, 2011 from Shear Diamonds Ltd. to Nunavut Water Board re Request for Extension of the Term of Nunavut Water Board Water Licence 2AM-JER0410 9the “Water Licence”);
2. Shear Diamonds Ltd. Care and Maintenance Plan, Jericho Project, Nunavut dated January 2011.