



NUNAVUT WATER BOARD

REASONS FOR DECISION INCLUDING RECORD OF PROCEEDINGS

In the Matter of:

Applicant: Benachee Resources Incorporated
A wholly owned subsidiary of Tahera Diamond Corporation

Subject: Application for Type “A” Water Licence

Date: December 22, 2004

Precedence: Where there is any inconsistency or conflict between the *Nunavut Land Claims Agreement Act* and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSRTA)*, the Agreement prevails to the extent of the inconsistency or conflict. Where there is any inconsistency or conflict between the *NWNSRTA* and any other *Act* of Parliament, except the *Nunavut Land Claims Agreement Act*, the *NWNSRTA* prevails to the extent of the inconsistency or conflict.

RECORD OF PROCEEDINGS

Applicant: Benachee Resources Incorporated
A wholly owned subsidiary of Tahera Diamond Corporation

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Purpose: Application for Type "A" water Licence for the Jericho Diamond Mine

Application Received: September 11, 2000

Date(s) of Hearing: Day 1: December 6, 2004
Day 2: December 7, 2004
Day 3: December 8, 2004

Members Present: Thomas Kudloo, Chair Robert Hanson, Vice-Chair
George Porter Lootie Toomasie
Thomas Kabloona Guy Kakkiarniun

Board Staff: Chief Administrative Officer: P. di Pizzo, B.Sc., M.Sc.
Manager, Technical Services: D. Filiatrault, P. Eng.
Technical Advisor Mining: D. Hohnstein, C.E.T
Hearing Coordinator: S. Lines, B.Sc., DEIA
Licence Administrator: P. Beaulieu
Licence Trainee: S. Ikkutisluk

Interpreter(s): B. Kogvik, E. Elias, M. Hunt, D. Tagornak

NWB Legal Counsel: W.A. Tilleman, Q.C.

Court Reporter: Tara Lutz

Parties: Applicant: G. Missal, Vice-President Nunavut Affairs
R. Pattenden, Mainstream Aquatics
K. Sexsmith, SRK Consulting
C. Scott, SRK Consulting
P. McCreath, Clearwater Consulting
D. Hayley, EBA Consulting
C. Smith, Nuna Logistics
D. Johnson, Vice-President Operations
B. Ott, AMEC Earth and Environmental
L. McLaughlin, Counsel

Department of Indian and Northern Development (DIAND):

G. Stephens, Acting Director of Operations
C. McLean, Lands Manager
E. Sherlock, Manager Water Resources
R. Eno, Water Resource Technician Kitikmeot
S. Stewart, Water Resources Officer
Jennifer Hayword, Senior Communication Officer
N. Cavanah, Counsel
G. Howell, Lands Specialist
K. Patrick, DIAND Regional Office
D. Osmond, Gartner Lee
S. Howsen, Gartner Lee
J. Brodie, Brodie Consulting

Nunavut Tungavik Incorporated (NTI): J. Ehloak, Environmental Coordinator

Kitikmeot Inuit Association (KIA): R. Kayasark, Vice-President
G. Clark,
J. Kaniak, Land Manager
M. Carter,
Dr. M. McGurk, Rescan Consultants
J. Donihee, Counsel

Hamlet of Kuglugtuk: P. Taptuna, Mayor

Environment Canada (EC): A. Wilson,

Department of Fisheries and Oceans Canada (DFO): D. Moggy, Habitat Biologist

Independent Consultants: B. Leece, Dillon Consulting Ltd.
R. Halim, Acres International Ltd.
B. Bennett, Acres International Ltd.

BACKGROUND AND REGULATORY HISTORY

Exploration/Bulk Sampling Type “B” Water Licence NWB1JER0306

The licensing activity at the Jericho site initially began in 1996, when the NWT Water Board issued a Type B Water Licence (N7L1-1666) to Lytton Minerals¹ for water use and waste disposal operations at the Jericho Camp. The Licence also covered activities related to their underground bulk-sampling work, but that licence did not cover full scale mining and milling. The chronological development at the Jericho site is roughly as follows:

In 1991 and 1992², predecessor companies Lytton Minerals Ltd. and New Indigo Resources Inc. began preliminary exploration through the staking of a large area of the Slave Province in the area north of the Point Lake kimberlite discovery. In 1993 and 1994, Tahera commenced an aggressive exploration program, consisting of a regional airborne geophysical survey covering some 5 million acres of ground.

The discovery of the Jericho kimberlite pipes started with the recovery of kimberlite indicator minerals from till samples in the spring of 1994. Follow-up airborne and ground geophysical surveys identified a number of targets within Carat Lake, and on land south of the lake. In February and March 1995, the JD-1 (Jericho land-based pipe) and JD-2 (a small satellite pipe) were discovered south of the lake.

Subsequent drilling showed that the Jericho kimberlite forms an elongate body with a straight, nearly vertical eastern wall and three lobate pipe-lobe protrusions on the west side. The majority of the drilling was completed in 1995 and 1996. In 1997, an underground decline was excavated. A total of 14,555 t of kimberlite were mined from the underground decline, of which approximately 9,435 t were processed at the diamond pilot plant constructed at the Lupin Mine. The majority of the drilling was completed in 1995 and 1996, although several additional holes were drilled in 1999 and 2000.

The ultimate detailed pit design³ contains reserves of 1.92 Mt ore at a recovered grade of 1.25 c/t. Waste, including low grade, inferred kimberlite material is estimated at 16.1 Mt giving a strip ratio of 8.4 to 1.

Regulatory History

1996	Northwest Territories (“NWT”) Water Board issued a Type B Water Licence (Licence No. N7L2-1666 for Lytton’s water use and waste disposal at the Jericho site.
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¹ On February 5, 1999 shareholders of Lytton Minerals and New Indigo Resources agreed to merge companies and formed Tahera Corporation; Tahera Diamond Corporation is the Corporate entity with Benachee Resources Inc. as a wholly owned subsidiary.

² Information taken from the Tahera Corporation - Jericho Diamond Project Description; Section 2.2.2 and 2.2.3

³ Information taken from the Tahera Corporation - Jericho Diamond Project Description; Section 5.4.4.1

1998	Nunavut Water Board (“NWB”) issued NWB1JER9801, renewal of the Lytton water licence
1999	NWB hearing/decision on security
2001	NWB extension of NWB1JER9801 for one year
2001	NWB amendment to NWB1JER9801 to allow for Pilot spray irrigation study
2003	NWB issued NWB1JER0306, renewal to Tahera Corporation Ltd.

There currently exist a licence for exploration and all obligations of this licence must still be met in accordance with section 46 of the *Act*. Further, it is up to the licensee to request a change in status to that licence including a return or credit for security assuming underlying obligations are properly met.

How are the responsibilities/obligations of the previously issued licence transferred to the new licence to consider section 46 of the *Nunavut Water and Nunavut Surface Rights Tribunal Act* (“*Act*”)⁴ which reads; “The expiry or cancellation of a licence does not relieve the holder from any obligations imposed by the Licence.”

Mine Development Type “A” Application for Water Licence

Benachee Resources Incorporated (“BRI”) is proposing to construct a project (mine⁵) that will have an eight-year operating mine life and will utilize a combination of open pit and underground mining methods to extract the kimberlite ore. According to current mine reserves the mine will produce approximately three million carats of diamonds. Processing of the kimberlite will occur on site and the diamonds will be sold to global markets. Ore mining is scheduled to maintain a plant processing rate of 330,000 t per year. The project will be self-sufficient and will have a footprint of approximately 220 hectares. The Jericho Project is located near Carat Lake, approximately 200 kilometres south east of Kugluktuk and 200 kilometres southwest of Bathurst Inlet. (Latitude 65°59'50”N and Longitude 111°28' 30”W)

On September 11, 2000, Tahera Diamond Corporation (“TDC”) on behalf of BRI filed an application for water licence in the Final Environmental Impact Statement to the Nunavut Impact Review Board (“NIRB”)⁶. In July, 2004 the NIRB Project Certificate was released pursuant to s. 12.5.5 of the *Nunavut Land Claims Agreement* (“*NLCA*”). This Certificate contained numerous requirements to be considered during the Water Licensing process.⁷

⁴ 49-50-51 Elizabeth II, Chapter 10 (2002)

⁵ “mine” means any work or undertaking in which minerals or ore containing minerals are removed from the earth or from talus by any method, and includes works, mills, concentrators, machinery, plant and buildings below or above ground belonging to or used in connection with the mine; (*mine*) Taken from The Territorial Lands Act Public Lands Grants Act; Regulations Respecting The Administration And Disposition Of Minerals Belonging To Her Majesty In Right Of Canada Under All Lands Forming Part Of The Northwest Territories (Canada Mining Regulations)

⁶ See the Final Hearing Report for the Jericho Diamond Project File No. 00MN059 for the Jericho Diamond Mine issued in February 2004 for additional procedural history.

⁷ See footnotes: 33-37

Following issuance of the NIRB Project Certificate, the NWB requested input from interested parties to prepare “Guidelines for the Applicant”⁸. (The Guidelines document serves to assist Tahera in developing the information required so the a the NWB, in accordance with its objects, can provide for the conservation and utilization of water in Nunavut in a manner that will provide for the optimum benefit from those waters for the residents of Nunavut in particular and Canadians in general.⁹). The Guidelines were provided to Tahera Corporation Limited in August 2004.

On September 7, 2004 the NWB distributed the application to interested persons and requested an assessment of the application with respect to conformity to the Guidelines prepared by the NWB. The Board issued a Notice of Application¹⁰ and a Notice of Public Hearing¹¹ was provided on September 25, 2004 with an initial assessment on conformity pending technical issue resolution.

The Board decided that a public hearing would be required in accordance with the *Act*, Section 52(1)(a)¹², and additionally in accordance with the *NLCA*, Article 13, section 13.7.2¹³.

The NWB then determined the need for a technical meeting and a pre-hearing subsequently was planned for Kugluktuk¹⁴ on October 28 - 29, 2004. At these meetings, the NWB directed all parties to work toward sharing information and resolving issues with the deadline of November 12, 2004 in preparation of the Final Hearing scheduled to take place December 6-7, 2004. The Technical Meeting was well attended and all parties welcomed the opportunity to clarify technical issues prior to the final hearing.

In a memo to the parties on November 1, 2004, the Board confirmed final hearing schedule and concluded that Tahera’s application fully conformed to the guidelines issued by the NWB on August 3, 2004. Final comments and interventions, based on the information submitted up until November 12, 2004, were due to be submitted to the NWB by November 30, 2004 to allow final preparation by the applicant and the NWB for the Public Hearing.

⁸ Nunavut Water Board Guidelines for Applicant – Tahera Corporation Limited – Jericho Diamond Project Dated 3 August, 2004

⁹ Memo to Greg Missal, Tahera Corporation Limited from Philippe di Pizzo, NWB Executive Director dated August 3, 2004

¹⁰ As required under s. 55(1) of the Act

¹¹ As required under s. 55(2) of the Act

¹² A public hearing shall be held by the Board before it disposes of any application in relation to a licence, unless the application is of a class that is exempted by the regulations from the requirements of a public hearing

¹³ Subject to Section 13.7.4 of the *NLCA*, the NWB shall hold a public hearing before approving any application. The NWB may, where there is no public concern expressed, waive the requirement for a public hearing

¹⁴ *NWNSRTA*; Section 53. A public hearing that is held by the Board shall take place in the community or communities within Nunavut most affected by the application before the Board

The public hearing in Kuglugtuk was not only required, it was well attended, with one notable exception the Government of Nunavut (GN). Approximately 50 people attended and made representations, including the Kitikmeot Inuit Association (KIA) which of course has full standing at our hearing.¹⁵ The notice of application,¹⁶ as well as venue selection,¹⁷ followed statutory requirements.

During the hearings, and subject to discussions surrounding the Inuit Impact Benefit Agreement (IIBA) (see page x of the Decision report) the Board heard no evidence of problems arising from compensation from existing¹⁸ or future users.¹⁹

The Board did hear from Inuit through the KIA and otherwise, regarding Inuit values.²⁰ These Inuit values are based among other things upon and include the need to preserve a clean and pristine water system and a healthy hydrological environment. The Board agrees with these values for which essentially there can be no price tag attached; the Board concludes the value is extremely high and should be reflected in its decision. Through monitoring, discussed elsewhere in this Decision Report²¹ the Board believes the Applicant should not only be responsible for monitoring the impacts of the Project but also to report back to the residents in writing, and in particular the Elders in person, on the results of any monitoring program on a regular basis.

JURISDICTION OF THE BOARD

This Board has jurisdiction over Benachee's application pursuant to Division 2 of the Act.²² Relevant sections in that Division allow the Board to issue a licence,²³ amend a licence,²⁴ or in certain circumstances, cancel a licence.²⁵

In deciding to issue a licence or engage in any other statutory function, the Board must follow the objects of the governing legislation, which are:

“... to provide for the conservation and utilization of waters in Nunavut, except in a national park, in a manner that will provide the optimum benefit from those waters for the

¹⁵ NWNSRTA, Section 50

¹⁶ The Board provided notice of application by written correspondence, communicated to individuals, the Board's Hearing Coordinator and media channels

¹⁷ Section 53 of the Act states: “A public hearing that is held by the Board shall take place in the community or communities within Nunavut most affected by the application before the Board.”

¹⁸ See section 58 of the NWSRTA

¹⁹ See section 60 of the NWSRTA

²⁰ See *infra*, footnotes 65 and 66 re: Millie and Marian

²¹ See pp. 18-21 of this decision and Section 70 of the Act

²² Section 42-81 of the Act

²³ See section 42, 48, 55, 56, and 70 of the Act

²⁴ See section 43(1)(b) of the Act

²⁵ See section 43(1)(c) of the Act

residents of Nunavut in particular and Canadians in general”²⁶

In setting the Terms and Conditions of this licence, the Board is guided by the objects and by the Project Certificate that covered these same matters.²⁷ The Board intends to meet its statutory duty to make *all* reasonable efforts to minimize *any* adverse effects on aquatic ecosystems. Reading the several Articles of the *NLCA* together, which the Board is entitled to do to understand its jurisdiction,²⁸ the Board relies on the broad definition of “ecosystemic” found in Article 12.1.1. to require not only NIRB but also the NWB to ensure all components of the ecosystem such as fish and fish habitat are protected within the parameters of section 71 of the *Act*. And to do so as much as possible.

REQUIREMENTS OF THE NWNSRTA

Objects of the Board and its Relationship to other Bodies

Land Use Plans

The Jericho Diamond Project is located in the West Kitikmeot Region of Nunavut where no Land Use Plan has been approved, consequently the Board was not required under s.36(2) to consider the Project’s conformity with a Land Use plan.

Relationship to Environmental Assessment

For the purpose of Benachee’s Application, two Articles of the *NLCA* are relevant and binding: Article 12 (Impact Assessment) and Article 13 (Water Management). Where possible, both chapters must be read together and interpreted as one.²⁹ Even without NIRB’s implementing legislation for impact assessment, a full environmental assessment review under Article 12 has now occurred, and a project certificate issued.³⁰ (Under the *NWNSRT Act*, the Nunavut Water Board must initially await³¹ the completion of NIRB’s screening and review process before issuing a water licence, and that process is now complete.³²) In NIRB’s Project Certificate, several conditions have been accepted by the Minister relating directly, or by implication to the water licence including, but not necessarily limited to the conditions related to monitoring³³, fish and aquatics³⁴, environmental management,³⁵ abandonment and restoration³⁶ and others³⁷.

²⁶ Section 35 of the Act

²⁷ See footnotes No. 34 to 39.

²⁸ See Article 2, section 2.9.1

²⁹ *NLCA*, section 2.9.1

³⁰ Project Certificate issued July 20, 2004

³¹ Section 39 of the Act states the board may not (and under section 13.5.4. of the *NLCA* “shall not”) approve the water application until NIRB is Article 12 is complied with

³² See also part 9 of the *NLCA* regarding relationship between NIRB’s Project Certificate and regulatory licensing

³³ See NIRB Project Certificate Conditions No. 6 and 7

³⁴ See NIRB Project Certificate Conditions No. 19-21

³⁵ See NIRB Project Certificate Conditions No. 25, 29-37

³⁶ See NIRB Project Certificate Conditions No. 41

³⁷ See NIRB Project Certificate Conditions No. 50 and 52

Additionally, two other conditions of the Project Certificate prohibited licensing of certain activities and this licence has not approved water use or deposit of waste from these activities. Should BRI or TDC wish to incorporate Spray Irrigation and/or the use of an outflow Diffuser as a project component in the future it must be “referred back to NIRB with further design detail to be dealt with under *NLCA* 12.4.3”³⁸

Finally, where this licence is more specific than the Project Certificate, or stricter than it, the Board finds authority from the *NLCA* to proceed with it because in the Board’s mind it is necessary especially for a new licence to be proactive and somewhat careful terms in the face of the several scientific uncertainties, resulting from the newness of the project and conflicting opinions from the parties and federal authorities on matters of water science, engineering and technology.³⁹ Specific examples include: pH, Aluminum, Total Dissolved Solids and so on. In these cases the Board feels justified in erring on the side of care and security for the aquatic ecosystem.

DECISION TO ISSUE

Following the public hearing and for reasons elaborated further below, the Board has decided to issue Water Licence NWB1JER0410 subject to the conditions set out therein.⁴⁰ The Licence contains terms and conditions the Board feels are necessary to protect the environment, conserve the water resources of Jericho River Watershed and provide appropriate safeguards in respect of the Licensee’s use of waters and deposit of wastes. The Licence also parallels the recommendations and suggestions made by the NIRB in the Environment Assessment Report approved by the Minister.

Name of the Applicant

The Board’s legislation allows it to issue a licence on “application” from a “licensee”.⁴¹ Licensee in turn is defined as:

“... a person to whom a licence is issued or assigned.”⁴²

The problem with this Application is that Tahera Corporation is the holder of the “Exploration Licence NWB1JER0306,”⁴³ Tahera *Diamond* Corporation is the party with whom KIA entered into a compensation agreement,⁴⁴ and Benachee Resources Inc, who had no corporate officer at the hearing,⁴⁵ is the legal entity who applied for this Type “A” water licence. The problem is expressed by legal counsel for the Kitimeot Inuit Association (“KIA”):

³⁸ See NIRB Project Certificate Conditions No. 38 and 39

³⁹ See *NLCA* section 12.9.8

⁴⁰ The Licence has been issued under separate cover

⁴¹ Section 42 and 43 of the Act

⁴² Section 4 of the Act

⁴³ See letter of P. di Pizzo to G. Missal, January 9, 2003

⁴⁴ This Agreement is now between Benachee and KIA and see Attachment No. 1

⁴⁵ Transcript pp. 206

“It does sort of fuzzy the fact that these are two separate corporate entities, but let me give you an analogy. When the NWT Water Board considered the Ekati licence in 1997, give or take, the same kind of issues came up about the relationship between BHP and the Canadian subsidiary and the Australian subsidiary. And in that case, you know, there was a fairly significant amount of security required by the water license, and there were some concerns about whether BHP Canada, and I’m not sure of the exact corporate name, but whether BHP Canada could provide that kind of assurance to the Crown. Any my recollection is that BHP International provided a corporate guarantee on behalf of its Canadian subsidiary. And I see this as a somewhat analogous situation here, and so I guess what I am wondering is since, as you indicated last night, you know Tahera is funded and ready to go, but we are not quite so certain about the circumstances with Benachee, whether Tahera Diamonds Inc. is ready to offer a corporate guarantee with respect to any security that might be demanded for this water license if it is issued to Benachee Resources Inc.”⁴⁶

To address the potential problems, the Applicant BRI had its parent TDC file a letter reflecting an undertaking made at the close of the hearing⁴⁷ reflecting the Parent’s full guarantee of BRI.⁴⁸ Related to this, on December 20, 2004, the Board received a letter of Agreement between KIA and the Applicant which meets the requirements, in the Board’s mind, of section 63 of the *Act*.⁴⁹

Finally, at the Kugluktuk hearings, legal counsel for DIAND raised the issue of NIRB’s Project Certificate having been issued to Benachee’s predecessor Tahera Corporation Limited.⁵⁰ Since the hearing ended, TDC has requested NIRB change the Project Certificate into the name of BRI, and NIRB has responded that the change would take place on January 6, 2005 and even though this correspondence satisfies the Board, it recommends that the Minister not approve the licence until NIRB finalizes the name change indicated in NIRB’s correspondence dated December 21, 2004.⁵¹

Issuance of a Licence

As stated above and subject to s.42(1) of the *Act* the Board has decided to issue Water Licence NWB1JER0410 subject to the terms and conditions set out therein. In issuing the licence, the Board is satisfied that the application contains the required information and is

⁴⁶ See Transcript pp. 207-208

⁴⁷ See Transcript pp 524-525; 532-533 (Undertaking No. 1)

⁴⁸ First letter of guarantee signed by the CEO of TDC to NIRB and second letter re: request for name change to NIRB Project Certificate by G. Missal, both cc’d to the NWB, is attached as Attachment No. 2 and No.3 respectively.

⁴⁹ The Compensation agreement, dated December 20, 2004, is attached as Attachment No. 1

⁵⁰ See Transcript, pp. 235-239.

⁵¹ Both Letters (TDC and NIRB) are attached to these Reasons as Attachments No. 3 & No. 4

in the proper form having regard to the Board by-laws and guidelines.⁵² Based upon statements made in NIRB's Decision Report,⁵³ the Board believes a mine in Nunavut is important to the future and economic well-being of our society and especially youth. Environmental impacts, which exist with any mining operation, will be minimized under NIRB's project certificate and now, under this water licence. Where there was doubt, in the Board's mind about a certain parameter or standard, the Board has imposed stringent monitoring conditions to ensure the company will be meeting its promises of performance made in its written application and repeated at the Kugluktuk hearings.⁵⁴

Applications in Relation to Licenses

The proponent urged the Board to grant the licence, arguing that to do so would meet the needs of Nunavummiut and Canadians in general.⁵⁵ The Board agrees and has issued a licence that it believes meets the needs of Canadians and in doing so, the Board is cognizant of each party who provided written⁵⁶ and oral evidence,⁵⁷ that the environment and in particular inland waters ecosystems must also be protected.

The Board is satisfied that s.48 of the *Act* have been satisfied. TDC on behalf of Benachee resources filed an application which complied with the Board's rules and accompanied with the application fee⁵⁸ and water use fee⁵⁹ as required by the regulations. The Applicant provided the necessary information to evaluate the qualitative and quantitative effect of the use of water or the deposit of waste on water.

Cancellation of Tahera Corporation Ltd. Type "B" Licence

Based on authority found in s.43(1)c (iii) of the *Act*, the Board may on application by a licensee or on its own motion cancel a licence when the Board considers the cancellation to be in the public interest.

Assignment of a Licence

The Licensee is reminded that any sale or other disposition of any right, title or interest in an appurtenant undertaking in accordance with s.44(1) of the *Act* may require authorization of the Board an assignment of the licence to the person to whom the sale or other disposition is made.

Term of Licence

In accordance with s.45 of the *Act*, the term of a licence or any renewal shall not exceed twenty-five years.

⁵² See s. 48 of the Act

⁵³ See NIRB conclusion s. 3.14

⁵⁴ See, e.g: Transcript pp. 110, 168

⁵⁵ Transcript, pp. 526

⁵⁶ For example, DFO's written submission at pp. 6-11; DOE's written submission at pp. 2-6

⁵⁷ For example, DFO's oral evidence see transcript pp. 354-361; DOE's oral evidence at pp. 300-313

⁵⁸ In accordance with section 48(1) of the Regulation fee of \$30 provided with the application

⁵⁹ In accordance with section 9(1)(b) of the Regulation water use fee

Even though the Applicant wanted a longer term,⁶⁰ the Board has decided to issue a licence for 6 years: one year of construction and 5 years of active mining and processing. Before the end of the licence, the licensee will be required to submit an application for renewal. The term of the licence is also intended to coincide with the requirement to submit a final Closure and Reclamation plan three years prior to closure of the mine. During this term, the licensee will have accumulated enough monitoring information which will be used by the Board to assess the performance of the licensee in the context of this licence renewal.

WATER LICENSE NWB1JER0410 TERMS AND CONDITIONS

Environmental and Water Quality Concerns

NIRB's Project Certificate raised several environmental concerns in its General Recommendation and binding Terms and Conditions. As it related to the Nunavut Water Board's jurisdiction over fresh water, examples of pollution problems that typically arise from municipal and industrial sources include: bacterial contamination (coliforms) accumulating solids (suspended materials, dissolved solids, etc), oxygen depletion, and eutrophication (caused by the introduction of nutrients into water systems and especially lakes). Again, these are general concerns and not necessarily specific to *Benachee*.

The Board's response to these concerns it found in the issuance of a licence that include but not limited to the following: general and aquatic effects monitoring requirements,⁶¹ and specific regulated⁶² water quality parameters, contingency plan,⁶³ remediation plan,⁶⁴ and additional monitoring including: geothermal, geochemistry, sediments.

At the Kugluktuk final hearing, two Elders express the need for the Board to protect the environment and especially water. The first Elder, Marian, said this:

“When are you going to abandon the site, how are you going to be reclaiming and cleaning up the site and all the facilities that you are going to be storing, and when you are going to be doing this reclamation? I would recommend that any mining companies should not leave anything debris or anything behind. It has been many many years since mining came up north. We here in Kugluktuk, the residents of this community, know that wherever these activities happen, there are drums, barrels and other items left behind, and that's not good to see. And while the mining companies are operating, we need to ensure that wildlife is looked

⁶⁰ See Transcript pp. 121, 519

⁶¹ General water quality objectives would seek to ensure the waters of Nunavut remain free, as much as possible, from discharges with concentrations that may be toxic or harmful to the aquatic ecosystems and human health

⁶² Regulated parameters include limits on pH, metals, nutrients, etc that must be achieved for final discharge to occur

⁶³ See Part J of the Licence

⁶⁴ See Part M of the Licence

after well, the water quality, fish. And we recommend that you do not leave anything behind and make sure that there is monitors, monitoring done at all stage before and after the activities of mining.”⁶⁵

The second Elder, Millie, said this:

“Number one, we must look after, monitor and protect the caribou. The second is to monitor and protect the fish, for those are the tow main diets that our generation and our ancestors have eaten, And he addressed in his words that in the past or in the future, our grandchildren and great-grandchildren will continue to have caribou and fish as their main diet. But first and foremost, which is the third point, it is to protect the water, because without the water, we cannot have healthy caribou, we cannot have healthy dish and we cannot have healthy people. But he also addressed in speaking that we must continue to develop, so we can’t say not to industry. But we must protect those three, the caribou, the fish and, fist and foremost, protect the water that we eat and drink off of, that provides the life for the people here in Nunavut, as well as for our food that we eat.”⁶⁶

Like the NIRB, this Board takes Inuit culture, customs, and knowledge seriously, and once again, where there are stricter licence terms than those proposed by the Applicant the Board justifies this out of the Board’s obligation to give “due regard and weight” to these Inuit values.⁶⁷

PART A: SCOPE, DEFINITIONS AND ENFORCEMENT

Enforcement, Compliance, etc

For the purpose of ensuring compliance with the licence or regulations, an Inspector designated by the Minister may inspect or examine works, waters or waste and exercise other powers according to the *Act*.⁶⁸ For additional detail refer to the Part K below.

The *Act* does include serious penalties for breach of the licence including furnishing or maintaining security⁶⁹ and any investigation or inspection is done by persons designated and empowered by the Minister.⁷⁰

⁶⁵ Transcript pp. 217

⁶⁶ Transcript pp. 500

⁶⁷ Section 33(2)(b) of the Act and section 13.3.13(b) of the NLCA. Other citizens raised concerns regarding water, Cf. Nellie Enukanavak, Transcript, pp. 228, lines 23-24. See also KIA’s oral evidence for example transcript p. 507

⁶⁸ Section 85-94 of the Act

⁶⁹ Section 90 of the Act

⁷⁰ Section85-88 of the Act

In accordance with the Section 70(2) of the Act, the Board recommends to DIAND that the Inspector, designated by the Minister, monitor construction by visiting the site at least quarterly during construction and file each site visit report with the Board within sixty (60) days of each quarterly inspection. The legislation allows the Board to “specify responsibilities of the Applicant, the Nunavut Impact Review Board or Her Majesty in right of Canada” and this would include DIAND, EC, or DFO in our opinion. The Board believes it critical as the first diamond mine in Nunavut and first full scale mining operation approved by this Board that DIAND assist in it’s regulatory oversight role to the fullest extent possible, coordinate this with other regulators and in particular with NIRB’s Monitoring Officer.

PART B: GENERAL CONDITIONS

Reports filed with the NWB

The NWB requires all licensees to file an Annual Report with the Board and in this case no implementation plan would be required.

Every other plan, or report (“plan”) submitted to the Board under this licence shall include a proposed timetable for implementation. The Board may alter or modify any such plan if necessary to the achievement of its legislative objectives and will notify the Applicant in writing of acceptance, rejection, or alteration of the Plan. Any such plan must be carried out in the timeframe set by the Board and cannot be undertaken without Board approval unless otherwise indicated in the licence.

Every plan to be carried out pursuant to the terms and conditions for this licence shall become a part of this licence. Any additional terms and condition imposed upon approval of the plan(s) by the Board become part of this licence.

PART C: CONDITIONS APPLYING TO SECURITY

Financial Responsibility of the Applicant and Requirement of Security

The *Act* allows the Board to require a licensee to furnish and maintain security with the Minister in a form determined by the regulations or satisfactory to the Minister.⁷¹ Further, in a matter that is at least related to the posting of security, the Board may not issue a licence unless the Board is satisfied that the financial responsibility of the applicant, *taking into account the applicant’s past performance*,⁷² is adequate for the mitigation measures and any costs associated with the closing or abandonment of the undertaking. Both of these issues, financial responsibility and security are discussed next.

⁷¹ Section 76(1) of the Act states: “The Board may require an applicant, a licensee or a prospective assignee to furnish and maintain security with the Minister in the form , of the nature, subject to such terms and conditions an in an amount prescribed by, or determined in accordance with, the regulations or that is satisfactory to the Minister.”

⁷² See section 57 (b) of the Act

Financial Responsibility

Regarding financial responsibility, and notwithstanding there were surprisingly no officer's from the applicant Benachee Resources Inc. present at the hearing,⁷³ the Board received assurances from Mr. Greg Missal, Vice-President of Nunavut Affairs for Tahera Diamond Corporation the parent company, that TDC will fully indemnify/guarantee the performance of Benachee, it's wholly owned subsidiary. At the hearing, Mr. Missal stated:

“ Benachee is a wholly owned subsidiary of Tahera Diamond Corporation., so ultimately Tahera is responsible for its subsidiaries. And part of this reclamation bonding would include all these items we are discussing.”⁷⁴

Further, at the request of Board staff⁷⁵, TDC tabled financial statements of the Parent company and the closing comments made clear the company will be tabling a written guarantee,⁷⁶ which was received on December 10, 2004.⁷⁷ For further explanation see section of Decision “Name of the Applicant”.

On this issue as well as security for costs, the Board notes that Tahera Corporation Limited the predecessor of TDC, has posted and maintained security with this Minister⁷⁸ for the exploration licence in the amount of \$918,000.00 dollars and the NWB has not been advised that TCL has been in breach of its obligations. The Board only notes this in assessing past performance for the Benachee's application under s.57 (b) of the *Act* and not to apply the \$918, 000.00 dollars as a credit for the security required by this licence. Any credit for the \$918,000.00 dollars is the subject of a separate application and proceeding.⁷⁹

As to the amount of security, the Board sets that figure at \$2.2M and does so for the following reasons. First, to the extent that it is marginally higher than the proposed amount of “water-only” security offered by DIAND's expert of roughly \$1.7M⁸⁰, Mr. Brodie, the Board notes in cross examination that Mr. Brodie stated that the calculations on the land-water split remained “subjective”.⁸¹ Second, the *Act* in section 71(a) states that the Board in setting the condition of a licence should make all reasonable efforts to minimize the adverse effects on aquatic ecosystems.⁸² Recognizing that security for

⁷³ Transcript, pp. 206; No one sworn in at the hearing was from BRI

⁷⁴ Transcript, pp. 161

⁷⁵ Transcript, pp. 531

⁷⁶ Letter received December 10, 2004 and is in Attachment No. 2; See also Transcript pp 532-533

⁷⁷ This letter guarantees that Tahera Diamond Corporation will satisfy all commitments and obligation of Benachee Resources Inc.

⁷⁸ Reference NWB1JER0306

⁷⁹ See this decision, pp. 3 & 11

⁸⁰ Transcript, pp. 123. Written submission of DIAND, pp. 32 (\$1.64 M for water).

⁸¹ See Transcript pp. 289-290

⁸² Section 71(a) states: “any adverse effect of the licensed use of water or deposit of waste on aquatic ecosystems and on the persons who are entitled to be paid compensation under section 58 or 60;”

abandonment and reclamation itself does not in this context always mitigate operational impacts, the Board nevertheless believes that taxpayers of Canada and in particular those of Nunavut should not carry the potential clean-up obligations to the delicate aquatic ecosystem in Nunavut's inland waters for a new mine where the impacts are still somewhat uncertain. Third, as stated elsewhere in this Decision Report,⁸³ two of the elders specifically raised concerns about water and fisheries protection.⁸⁴ Fourth, the Board has previously required and again adopts the policy of full cost security as found in DIAND's Mine Site Reclamation Policy for Nunavut. At page 5-6 of the document, the position of DIAND with which we agree is this:

- “Mine site reclamation should reflect the collective desire and commitment to operate under the principles of sustainable development, including the “polluter pays” principle.
- The required standard of reclamation should be based on the 1994 Whitehorse Mining Initiative definition: “returning mine sites and affected areas to viable and, wherever practicable, self-sustaining ecosystems that are compatible with a healthy environment and with human activities.”
- Every new mining operation should be able to support the cost of reclamation. Existing mining operation will also be held accountable for their reclamation liabilities.
- The total financial security for final reclamation required at any time during the life of the mine should be equal to the total outstanding reclamation liability for land and water combined (calculated at the beginning of the work year, to be sufficient to cover the highest liability over that time period).
- Estimates of reclamation costs, for the purposes of financial security, should be based on the cost of having the necessary reclamation work done by a third-party contractor if the operator defaults. The estimates should also include contingency factors appropriate to the particular work to be undertaken.”⁸⁵

Finally, the evidence of KIA at the hearing was that their method of assessing security globally (and by necessary implication, for water related security at least to some extent) was in the nature of several hundred thousand dollars higher than that of the Applicant, and DIAND.⁸⁶ While the Board does not agree or disagree that the overall “land and water” security should be an exact amount between \$9M and \$15M dollars, the Board nevertheless feels that a small margin of error should be allowed in the water-related

⁸³ See footnote 65 and 66

⁸⁴ See Transcript pp.217 and 500

⁸⁵ Mine Site Reclamation Policy for Nunavut (2002). Linked to NIRB documents at Transcript pp. 220-221

⁸⁶ KIA written submission, pp. 12-19; Transcript, pp. 455-458; KIA exhibit No. 21

security for the expression of Inuit values which on a site specific basis for a new mine are not possible to establish with perfect confidence. Because of that, the final amount of security is 35% higher than DIAND's estimate, and, given the reasons above, the Board finds the amount to be appropriate in all the circumstances including the, *NLCA*, and environmental protection concerns of the NIRB as expressed and repeated in its Project Certificate.⁸⁷

PART D: CONDITIONS APPLYING TO CONSTRUCTION

In the absence of detailed implementation schedule with the Applicant, the Board attempts to provide maximum flexibility to the Applicant while ensuring necessary information will be provided for the Board's consideration.

PART E: CONDITIONS APPLYING TO WATER USE

The *Act* states "... no person shall use, or permit the use of, water in Nunavut except in accordance with the conditions of a licence." BRI indicated in the water licence application⁸⁸ that the water quantity projected use would be approximately 35 cubic metres per hour which is approximately equal to 306,000 cubic metres annually (NWB assuming 24 hours per day for 365 days in operation). At the hearing TDC requested authorization from the Board to use an annual amount of 500, 000 cubic metres on "just in case"⁸⁹ basis. No breakdown was provided to the Board to justify the requested increase and many parties expressed concern with the new amount. Since the environmental impact assessment recently completed by the NIRB did not assess impacts based on the additional quantity requested by the BRI, and without further justification, the Board cannot approve the additional request at this time. However the Board is comfortable in setting the maximum water quantity equivalent to the maximum design intake flow of 40 cubic metres per hour⁹⁰ which is equivalent to approximately 350, 400 cubic metres annually. The Board staff was assured at the technical meeting that the quantity requested would cover other miscellaneous quantities of water required during the construction period for uses such as winter road construction and hydrostatic testing.

PART G: CONDITIONS APPLYING TO WASTE MANAGEMENT

From an enforcement and compliance perspective, the Board endeavored to write this licence fairly and properly; we have tried to outline clearly the discharge parameters and other limits of the licence in a way that will not over regulate (or under regulate); failure to do so could lead to over/under enforcement.

⁸⁷ NIRB Project Certificate sections 2,4, 19-24, 41 and 52

⁸⁸ NWB Application filed by BRI on September 11, 2000

⁸⁹ Transcript pp 203

⁹⁰ Project Summary s.2.1 and FEIS Project Description pp. 11

Fortunately, for the licence terms, most parties agreed on discharge parameters and limits, with few exceptions.⁹¹ Where parties did not agree, for example on the general issue of monitoring versus regulation, the Board has decided to regulate at this time, recognizing that at licence renewal, or earlier, the Board can amend any condition of a licence.⁹²

Regulated Discharge Parameters

pH

The pH of the final effluent discharged to Stream C3 shall be managed by the licensee to prevent acute toxicity from ammonia. EC recommends keeping the pH between 6 - 8.5, which is lower than the proposed upper pH limit of 9 proposed by BRI. pH is critical as it “has been shown in previous studies with other mines to be a factor in the toxicity of kimberlite”⁹³ Under cross examination Ms. A. Wilson indicated that Kimberlite toxicity testing done by Ekati was for acute toxicity and they saw full mortality above pH 8.8. To set the upper limit of pH at 8.5 the Board is concerned that this could be harmful to aquatic ecosystems but also potentially put BRI out of compliance through error in sampling.⁹⁴ While this will not assure that pH is kept below the critical level of 8.8 at all time, additional acute toxicity testing is to be done by the Licensee as part of the Aquatic Effects Monitoring Plan such that the Board can monitor the issue further. The Board has decided to set upper limit at 8.8 in consideration of site specific predictions for discharge and can be further evaluated during operations.

Nitrate

BRI has proposed limits for Nitrate and DIAND indicated that all parameters listed with the exception of aluminum would be protective of the receiving environment beyond the 200 meter mixing zone at which DIAND agreed. DIAND main reasoning for requested more restrictive discharge limits for Nitrate rested in ensuring proper explosives management was undertaken by BRI on site. Given the conflicting information, at this time, the Board requires that an explosives management plan be submitted for review and approval. In short, the Board agrees to limits proposed by BRI.

Nitrites

While it is confusing to say the least as indicated by Ms. K. Sexsmith and Ms. A Wilson. nitrite levels are less toxic at higher chloride values. It is EC submission that chloride levels will not reach predicted values for a period of time, given this and limits set for other Diamond mines, the Board agrees to the more stringent values proposed by both DIAND and EC to err on the side of prudence. BRI may apply at a future date to obtain relief for nitrite followings submission of evidence to support the request.⁹⁵

⁹¹ e.g. Aluminum

⁹² Section 43(1) of the Act

⁹³ EC comments in Transcript pg 305

⁹⁴ EC and TDC both agreed that error in field sampling of .3 is reasonable. See Transcript pp. 305, 324

⁹⁵ While TDC indicated that they only to monitor nitrite, EC suggested that trend to regulating based on Ekati renewal. The Board decides to maintain nitrite as a regulated parameter

Chromium

The discharge criteria for chromium shall be set by measure of total chromium and is set at an average of 0.020 mg/L and a grab sample limit of 0.040 mg/L. Aquatic thresholds are set to reflect the Board's concern that there be no measurable effect on the aquatic ecosystem. Several parameters proposed by BRI in setting discharge requirements were based on CCME guidelines. Based on cross examination of EC on the issue of differing chromium valent states, the Board is not convinced that the hexavalent form is an issue. The Board recommends that to determine whether or not it is present or an issue, BRI characterize the effluent to determine the forms of chromium that exist and this can be accomplished by including monitoring of for Total Chromium, trivalent chromium and hexavalent chromium. At this time, and subject to monitoring data to be submitted by BRI when it becomes available, the Board agrees to maintain the limit proposed by BRI. Given the lack of evidence from all parties on this matter.

Zinc

BRI proposes to meet Canadian Council of Ministry of Environment ("CCME") water quality objectives for Zinc with an Aquatic threshold 0.03mg/l CCME 1999. EC asserts that meeting the CCME guidelines at the edge of the 200m zone can be achieved,⁹⁶ and further suggests that KIA's and DIAND's proposals to set limits for zinc and nickel in line with other diamond mines in the north would actually yield "lower than CCME guidelines."⁹⁷ Given that KIA's and DIAND's proposal is less scientific, the Board agrees with EC and BRI proposal.

Aluminum

With respect to aluminum the Board heard conflicting evidence⁹⁸ between the parties on setting the regulated parameter for Total Aluminum. Based on EC's submission which suggests that "acidic pulse associated with snow melt will mobilize aluminum into solution in more soluble forms"⁹⁹ and that Tahera has agreed to further quantify Aluminum and measure Dissolved Aluminum. The Board has decided that further consideration is needed and therefore sets regulated parameters for Total Aluminum and in addition Dissolved Aluminum. No opposition was presented to further regulate Dissolved Aluminum.

Uranium

EC proposed that monitoring and not regulating Uranium would be sufficient. Whereas, DIAND agrees with all parameters except for Aluminum as proposed by BRI¹⁰⁰ and in light of potential effects of uranium to zooplankton populations in Lake C3 under maximum source concentration assumptions, DIAND recommended that BRI revisit its discharge limits of 1 mg/L (max grab) and 0.5 mg/L (average) to ensure that aquatic life

⁹⁶ See EC comments Transcript pp. 303 and 470

⁹⁷ Transcript pp. 470-471

⁹⁸ EC's position, see Transcript pp. 327-328; INAC position, see Transcript pp. 517

⁹⁹ EC written submission pp. 5

¹⁰⁰ See Transcript pp. 516

at the edge of the 200 m mixing zone in Lake C3 will protect aquatic life.¹⁰¹ BRI indicated that they are “willing to follow the Monitoring program recommended by DIAND”.¹⁰² The Board decides that until such time that BRI can further confirm assumptions, the Board will maintain the parameters BRI proposed as regulated parameters.

Total Dissolved Solids (TDS)

DIAND agrees with limits proposed by BRI, EC recommend only monitor; Given that the value for TDS is generally not regulated as shown by the Licensee (footnot table 4.1 proposed discharged limits) and the board agrees with KIA that the max average concentration should be set at 2000 mg/L to yield a value of 200mg/l at the mixing zone. The Board has decides to regulate the parameter at the levels proposed by BRI.

Total Suspended Solids (TSS)

All parties agree on regulated parameters proposed for operation by BRI and therefore the Board set parameters as proposed for discharge from the PKCA. However, BRI requested less stringent parameter during the construction phase to be set at maximum average concentration at 50.0 mg/L and grab at 100 mg/L. EC agrees to the proposed limits as it related to site runoff, but recommends that the limits be set at operation limits for the PKCA given that “increasing suspended solids and turbidity in the stream during the most productive season, that is when it is going to do the most harm.”¹⁰³ In response Mr. Ott for BRI, indicated that it “is possible to discharge or dewater the lake to a fairly great extent by sticking to those limits”¹⁰⁴ more flexibility was desirable. To ensure protection of the receiving environment in stream C3 and further in Lake C3 during construction the Board agrees with EC recommendation with respect to the PKCA.

PART H: CONDITIONS APPLYING TO WASTE MANAGEMENT PLANS

The Board recognizes the importance of effective management of waste and therefore requires BRI to submit standard mining operation management plans for the PKCA, waste rock, and other waste facilities¹⁰⁵ to ensure proper monitoring and treatment of wastes.

PART K: CONDITIONS APPLYING TO GENERAL MONITORING PROGRAM

As stated previously, for the purpose of ensuring compliance with the licence or regulations, an Inspector designated by the Minister may inspect or examine works, waters or waste and exercise other powers according to the *Act*.¹⁰⁶ For the purpose of

¹⁰¹ See DIAND written submission pp. 30

¹⁰² INAC statement, see Transcript pp. 517

¹⁰³ See Transcript pp. 321

¹⁰⁴ See Transcript pp. 321-322

¹⁰⁵ This includes: Wastewater treatment facilities, Landfill and Landfarm operation and management plan(s). This can be submitted as stand alone documents or as one complete Operation and Management Plan

¹⁰⁶ Section 85-94 of the Act

monitoring, the Board may include conditions in its licence (and it has) regarding monitoring programs to be undertaken.¹⁰⁷

The Board point out that Monitoring was one of the key requirements of NIRB's Project Certificate.¹⁰⁸ In the public hearing for this water licence application, monitoring was raised in oral testimony by several parties repeatedly.¹⁰⁹ This included DFO,¹¹⁰ DIAND,¹¹¹ KIA/NTI,¹¹² Acres International/Dillon Consulting Ltd,¹¹³ and Environment Canada.¹¹⁴ The Board agrees, and pursuant to this licence and subject to section 70(2) of the *Act*, the Board has required the proponent to be fully responsible for the monitoring Programs and Plans identified in Section K and Section L, respectively, of this water licence.

PART L: CONDITIONS APPLYING TO GENERAL AND AQUATIC EFFECTS MONITORING PLANS

The Board is requesting that an updated comprehensive "General Monitoring Plan" be submitted to the Board for approval, which reflects monitoring issues raised during the regulatory review process and those outlined by the Board in this Licence. This request is based on the fact, that several inconsistencies were noted in the original "Operational Monitoring Summary Report"¹¹⁵ and the edited document was only received on the first day of the hearing.¹¹⁶

With respect to the other Plans required in the Part, all parties agreed including TDC that an Annual seepage survey and an Aquatic effects monitoring plan should be submitted to the Board. The Board sees no reason to disagree.

PART M: CONDITIONS APPLYING TO CLOSURE AND RECLAMATION

BRI proposes to submit a revised conceptual Closure and Reclamation Plan with Board within nine months of issuance of this licence.¹¹⁷ The Board generally agrees but set the submission at nine months from the effective date of the licence. As stated earlier, the term of the licence is intended to coincide with the requirement to submit a final Closure and Reclamation plan three years prior to closure of the mine. During this term, the

¹⁰⁷ Section 70 (1)(c) of the Act

¹⁰⁸ Cite Term/condition(s) of PC

¹⁰⁹ For example, see Transcript KIA statements pp. 398, 400-401

¹¹⁰ DFO written submission, pp. 10-11

¹¹¹ DIAND written submission, pp. 22-25

¹¹² KIA/NTI written submission, pp.8-10, 26-27

¹¹³ Acres/Dillon written submission, pp 2-3

¹¹⁴ EC written submission, pp. 2-3

¹¹⁵ Appendix I of TDC submission for water licence

¹¹⁶ Exhibit No. 7

¹¹⁷ Exhibit No. 26. Board will allow flexibility by setting licence condition such that the plan is required nine months from the effective date of the licence.

licensee will have accumulated enough monitoring information which will be used by the Board to assess the performance of the licensee in the context of this licence renewal. The Board request that as part of the application for licence renewal BRI submit a proposed final plan which includes data assessment, and recommendations based on monitoring data obtained during operation up to the point of a renewal application being filed.

SCHEDULES

Schedules provide instructive detail to the conditions appearing in more general terms in the main body of the Licence and are spelled out in this format for greater clarity. Schedule except for definitions are for reports to be filed with the board.

APPENDIX A – LIST OF SUBMISSIONS AND CORRESPONDENCE

Application:

1. Cover letter and initial submission of the Jericho Diamond Project water license application, dated September 11, 2000.

Submissions and Correspondence Commencing with NIRB Project Certificate

1. Project Certificate NIRB (No. 002) received on July 20, 2004, from Nunavut Impact Review Board.
2. Memo to distribution, from Philippe di Pizzo, Executive Director, NWB dated July 20, 2004 re: Jericho Diamond Project – NWB1JER (project certificate).
3. Letter to Philippe di Pizzo, Executive Director, NWB from Anne Wilson, Water Pollution Specialist, Environment Canada, dated June 24, 2004 re: Tahera Corporation – Upcoming Water Licence Hearings for the Jericho Project.
4. Letter to Dionne Filiatrault, Senior Technical Advisor, NWB from Colette Meloche, Environmental Assessment / Contaminated Sites Specialist, Environment Canada, dated July 28, 2004 re: NWB1JER – Final Draft Guidelines, Jericho Diamond Project.
5. Letter to Phyllis Beaulieu, Manager of Licensing, NWB from Gladis Lemus, A/Director Environmental Protection, GN-DOE, dated July 30, 2004 re: NWB1JER – Final Draft Guidelines – Jericho Diamond Project – Tahera Corporation Limited.
6. Letter to Greg Missal, Tahera Corporation Limited, from Philippe di Pizzo, Executive Direction, NWB dated August 3, 2004 re: Final Water License Application Guidelines – Jericho Diamond Project.
7. Letter to Mr. Tim Byers, Technical Consultant, Land & Environment Committee, Yellowknives Dene First Nation, from Stephen Lines, Mine Hearing Coordinator, NWB, dated August 6, 2004 re: Request for Clarification on Jericho Final Guidelines.
8. Letter to Philippe di Pizzo, Executive Director, NWB from Yellowknife's Dene First Nation, dated August 12, 2004 re: Request for Participatory / Intervener Funding for the Jericho Tahera Diamond Mine and the Bathurst Port and Road Licensing and Regulatory Proceedings.
9. Report to Jericho Distribution entitled Jericho Diamond Project Community Information Report – Gjoa Haven, Cambridge Bay, Kugluktuk, dated August 19th – September 1, 2004, from Stephen Lines, Mine Hearing Coordinator, NWB.

10. Letter to Philippe di Pizzo, Executive Director, NWB from KIA Legal Counsel, John Donihee, dated September 6, 2004 re: KIA and NTI Participation in NWB Jericho Project Licence Proceeding.
11. Letter to Philippe di Pizzo, Executive Director, NWB from Geoffrey Clark, Environmental Screener, KIA, dated September 6, 2004 re: Budget for KIA and NTI Participation in NWB Jericho Project Licence Proceeding.
12. Letter to Members, Nunavut Implementation Panel, c/o Leslie Cousins & Blandina Makkik, Nunavut Implementation Panel Support Group, from Philippe di Pizzo, Executive Director, NWB dated September 8, 2004 re: Participant Funding – Jericho Diamond Project.
13. Letter to Philippe di Pizzo, Executive Director, NWB from KIA Legal Counsel, John Donihee, dated September 12, 2004 re: Tahera Corporation Jericho Diamond Project Water Licence Application.
14. Memo to Philippe di Pizzo, Executive Director, NWB from Geoff Clark, Environmental Screener, KIA dated September 20, 2004 re: File #: NWB1JER – Conformity Analysis of Tahera Corporation Limited’s Water License Application for the Jericho Diamond Project.
15. Letter to Phyllis Beaulieu, Manager of Licensing, NWB from Stephen Harbicht, Head, Assessment and Monitoring, Environment Canada, dated September 21, 2004 re: NWB1JER – Tahera Diamond Corp. – Jericho Diamond Project – Water License Application Conformity Analysis.
16. Letter to Philippe di Pizzo, Executive Director, NWB from Robert Eno, Water Resources Coordinator, Indian and Northern Affairs Canada, dated September 21, 2004 re: Conformity Analysis of Tahera Corporation Limited’s Water Licence Application for the Jericho Diamond Project.
17. Letter to Phyllis Beaulieu, Manager of Licensing, NWB from Derrick Moggy, Habitat Management Biologist, Fisheries and Oceans Canada, dated September 22, 2004 re: Comments regarding the Conformity Analysis of Tahera Corporation Limited’s Water License Application for the Jericho Diamond Project.
18. Letter to Phyllis Beaulieu, Manager of Licensing, NWB from Gladis Lemus, Manager Pollution Control & Air Quality, GN-Department of Environment, dated September 22, 2004 re: NWB1JER – Conformity Analysis Jericho Diamond Mine – Tahera Diamond Corporation.
19. Letter to Gregory G. Missal, Vice President, Government of Regulatory Affairs, Tahera Diamond Corporation, from Philippe di Pizzo, Executive Director, NWB dated September 25, 2004 re: Conformity Analysis of Tahera Corporation Limited’s Water Licence Application for the Jericho Diamond Project.

20. To Philippe di Pizzo, Executive Director, NWB from Greg Missal, Vice President, Government of Regulatory Affairs, Tahera Diamond Corporation, re: Jericho Diamond Project – Submission to the Nunavut Water Board – Summary Documents and Appendices A to Z, September 2004, received on September 28, 2004.
21. Memo to Local Organizations from Phyllis Beaulieu, Manager of Licensing, NWB, dated September 30, 2004 re: Notice of Application and Public Hearing.
22. Memo to News North from Phyllis Beaulieu, Manager of Licensing, NWB, dated September 30, 2004 re: Request to Place Ad for NWB1JER D.
23. Memo to Local Organizations from Phyllis Beaulieu, Manager of Licensing, NWB, dated October 4, 2004 re: Notice of Public Meeting on the Jericho Diamond Project Water License Application.
24. Letter to Philippe di Pizzo, Executive Director, NWB from Derrick Moggy, Habitat Management Biologist, Fisheries and Oceans Canada, dated October 4, 2004 re: Jericho Diamond Project – NWB Technical, Pre-Hearing and Final Hearing Meetings.
25. Memo to Jericho Diamond Project Distribution List, from Dionne Filiatrault, Manager Technical Services, NWB re: Agenda for Jericho Diamond Project Technical Meeting.
26. Letter to Philippe Di Pizzo, Executive Director, NWB from Bernie MacIsaac, A/Director, Operations, Indian and Northern Affairs Canada, dated October 5, 2004 re: Jericho (Tahera Diamond Corporation) Technical Meeting.
27. Letter to Philippe di Pizzo, Executive Director, NWB from Stephen Harbicht, Head, Assessment and Monitoring, Environment Canada, dated October 5, 2004 re: NWB1JER – Tahera Diamond Corporation, Jericho Diamond Mine Project – Technical Meeting and Pre-Hearing Conference.
28. Email to Parties, from the Nunavut Impact Review Board, dated October 7, 2004 re: Jericho Diamond Mine – Supplementary Report.
29. Memo to Jericho Distribution List, from Philippe di Pizzo, Executive Director, NWB dated October 8, 2004 re: Technical Meeting and Pre-Hearing Conference – Application for a Type A Licence, Jericho Diamond Mine (Nunavut).
30. Memo to Tahera Distribution List, from Stephen Lines, Mine Hearing Coordinator, NWB, dated October 8, 2004 re: Receipt of Tahera Diamond Corporation Addendum Document.
31. Email to Jericho Distribution List, from Phyllis Beaulieu, Manager of Licensing, NWB dated October 8, 2004 re: agenda and resumes for Bryan Leece, Ulysses Klee, Paul Holmes, Ramli Halim, Bruce Bennett.

32. Memo to Local Organizations from Phyllis Beaulieu, Manager of Licensing, NWB, dated October 14, 2004 re: Notice of Public Meeting on the Jericho Diamond Project Water License Application.
33. Memo to Local Organizations from Phyllis Beaulieu, Manager of Licensing, NWB, dated October 20, 2004 re: Notice of Technical Meeting and Pre-Hearing Meeting on the Jericho Diamond Project Water License Application.
34. List of Questions for Technical Meeting on October 28, 2004, undated, prepared by R. Halim, Acres International Limited.
35. Letter to Dionne Filiatrault, Manager of Technical Services, NWB from Anne Wilson, Water Pollution Specialist, Environment Canada, dated October 22, 2004 re: Tahera Diamond Corporation Water Licence Application Addendum – Outstanding Technical Issues.
36. Questions Pertaining to Technical Memorandum W – Site Water Management – Prepared by Paul D. Holmes, P.Eng., Acres International Limited, dated October 25, 2004.
37. Memo to Tahera Distribution List, from Stephen Lines, Mine Hearing Coordinator, NWB dated October 25, 2004 re: Teleconferencing for Technical Meeting and Pre-Hearing Conference, October 28th and 29th, 2004, Kugluktuk.
38. Letter to Philippe di Pizzo, Executive Director, NWB from Robert Eno, Kitikmeot/Deewatin Regional Coordinator, Indian and Northern Affairs Canada, dated October 26, 2004 re: Jericho (Tahera Diamond Corporation) Technical Meeting.
39. Questions – Supplemental, dated October 27, 2004 from Indian and Northern Affairs, Nunavut Regional Office.
40. Memo to Dave Osmond, cc: Tahera Diamond Corporation and Nunavut Water Board, from Bruce Ott, AMEC Earth & Environmental, dated November 1, 2004 re: Bathymetry of Lake C3.
41. Memo to Distribution List, from Philippe di Pizzo, Executive Director, NWB dated November 1, 2004 re: Final Hearing Schedule, Associated Deadlines and Information.
42. Additional Questions/Issues for Discussion, from Acres International Limited, dated November 8, 2004.
43. Letter to Greg Missal, Vice President, Government Affairs, Tahera Corporation, from Bruce Ott, Senior Environmental Scientist, AMEC Earth & Environmental, dated November 2, 2004 re: Landfarm Management Plan Amendments.

44. Memo to Local Organizations, from Phyllis Beaulieu, Manager of Licensing, NWB dated November 12, 2004 re: Notice of Public Meeting On The Jericho Diamond Project Water License Application.
45. Email from Pete McCreath, Clearwater Consultants Ltd., to Kelly Sexsmith and cc'd to Dionne Filiatrault, Senior Technical Advisor, NWB dated November 11, 2004 re: Bennett Additional Questions.
46. Memo to Lynn Carter, KIA from Bruce Ott, AMEC Earth & Environmental, dated November 12, 2004 re: KIA Additional Questions re. Tahera Water Licence Application – Re-Issue.
47. Letter to Dionne Filiatrault, Manager Technical Services, NWB from Ramli Halim, P.Eng., Senior Geotechnical Engineer, Acres International Limited, dated November 16, 2004 re: Tahera – Jericho Diamond Mine – Teleconference Meeting with Tahera – November 9, 2004.
48. Letter to Greg Missal, Vice President, Government and Regulatory Affairs, Tahera Diamond Corporation, from Phyllis Beaulieu, Manager of Licensing, NWB dated November 25, 2004 re: Water License Application – Jericho Diamond Project – NWB File #: NWB1 JER D.
49. Letter to Dionne Filiatrault, Manager Technical Services, NWB from Bryan Leece, Ph.D., Senior Toxicologist, Dillon Consulting, dated November 25, 2004 re: Review of Tahera Diamond Corporation Submission to the Nunavut Water Board for the Jericho Diamond Project.
50. Letter to NWB Licensing Administrator, NWB from Bruce Ott, Ph.D., Senior Environmental Scientist, AMEC Earth & Environmental, dated November 26, 2004 re: Amendment to Jericho Project Suggested Nitrite Discharge Criteria.
51. Letter to Thomas Kudloo, Chairperson, NWB from Chuck Brumwell, Manager, Northern Division, Environment Canada dated November 26, 2004 re: Environment Canada's submission to the Nunavut Water Board in connection with the scheduled Public Hearing concerning Tahera Diamond Corp's water license application.
52. To Phyllis Beaulieu, Manager of Licensing, NWB from Scott Stewart, Inspector, Indian and Northern Affairs Canada, Industrial Water Use Inspection Report, dated July 15, 2004 and received by the Nunavut Water Board on November 26, 2004.
53. Email and attachments to Phyllis Beaulieu, Manager of Licensing, NWB from Derrick Moggy, Habitat Management Biologist, Fisheries and Oceans Canada, dated November 29, 2004 re: Responses from Mainstream to DFO Letter of November 4, 2004.

54. Letter to Phyllis Beaulieu, Manager of Licensing, NWB from Peter Taptuna, Mayor of Kugluktuk, dated November 29, 2004 re: Tahera Water License Application Comment Submission.
55. Letter to Dionne Filiatrault, Manager of Technical Services, NWB from R.A. Halim, Senior Geotechnical Engineer, Acres International Limited, dated November 29, 2004 re: Jericho Diamond Mine – Review and Comments on Tahera’s Submissions for the Water License Application.
56. Email submission to Phyllis Beaulieu, Manager of Licensing, NWB from Derrick Moggy, Habitat Management Biologist, Fisheries and Oceans Canada, dated November 30, 2004 re: Fisheries and Oceans Canada Intervention Comments Jericho Diamond Project 2004-11-30.
57. Email submission to Philippe di Pizzo, Executive Director, NWB from Geoff Clark, Environmental Screener, KIA dated November 30, 2004 re KIA’s Submission to the Nunavut Water Board regarding the Jericho Diamond Project Water License Application.
58. Email and attachment to Phyllis Beaulieu, Manager of Licenseing, NWB from Derrick Moggy, Habitat Management Biologist, Fisheries and Oceans Canada, dated November 30, 2004 re: Response to DFO – channel design.
59. Letter to Philippe di Pizzo, Executive Director, NWB from Robert Eno, Water Resources Coordinator, Indian and Northern Affairs, dated November 30, 2004 re INAC Intervention, Tahera Diamond Corporation Limited’s Water License Application.

APPENDIX B – LIST OF EXHIBITS FILED AT THE PUBLIC HEARING

1. December 3, 2004 letter to Phyllis Beaulieu, Manager of Licensing, NWB from Greg Missal, Vice President, Government and Regulatory Affairs, Tahera Diamond Corporation re: Regulatory Instruments for the Jericho Diamond Project, submitted by Tahera Diamond Corporation.
2. Tahera Diamond Corporation PowerPoint presentation – electronic copy, submitted by Tahera Diamond Corporation.
3. Tahera Diamond Corporation PowerPoint presentation – hard copy, submitted by Tahera Diamond Corporation.
4. INAC PowerPoint presentation – electronic copy, submitted by INAC.
5. INAC PowerPoint presentation – electronic copy, submitted by INAC.
6. INAC table clarification “Segregation Land & Water Liability”, submitted by Elizabeth Sherlock, INAC.
7. Tahera Diamond Corporation Operational Monitoring Summary (edited version), dated November 3, 2004, submitted by AMEC Earth & Environmental.
8. Environment Canada’s PowerPoint presentation – hard copy, submitted by Anne Wilson, Environment Canada.
9. Environment Canada’s PowerPoint presentation – electronic copy, submitted by Anne Wilson, Environment Canada.
10. Department of Fisheries and Oceans Canada PowerPoint presentation – hard copy, submitted by Derrick Moggy, Department of Fisheries.
11. Department of Fisheries and Oceans Canada PowerPoint presentation – electronic copy, submitted by Derrick Moggy, Department of Fisheries.
12. Environment Canada – Acute and Chronic Toxicity of Two Waste Water Treatment Polymers to Lake Trout, submitted by Anne Wilson, Environment Canada.
13. Hamlet of Kugluktuk submission, submitted by Peter Taptuna, Mayor of Kugluktuk.
14. Environment Canada – Proposed Definitions for NWB Hearing, submitted by Anne Wilson, Environment Canada.

- 14(b) Tahera's comments on Environment Canada's Proposed Definitions for NWB Hearing, submitted by Tahera Diamond Corporation.
15. Joint Presentation NTI/KIA – hard copy, submitted by Geoff Clark, KIA.
16. Internal Memo from James Elphick, Nautilus Environmental, to Bruce Ott, dated December 01, 2004, re: Proposed Nitrite Water Quality Criteria, submitted by Bruce Ott.
17. Dillon/Acres presentation – hard copy, submitted by Ramli Halim, Bryan Leece, and Bruce Bennett.
18. Dillon/Acres presentation – electronic copy, submitted by Ramli Halim, Bryan Leece, and Bruce Bennett.
19. Joint presentation NTI/KIA – electronic copy, submitted by Geoff Clark.
20. Acres/Dillon Closing Statement, submitted by Ramli Halim, Acres International.
21. KIA security assessment information, submitted by John Dohihee.
22. Environment Canada closing remarks, submitted by Anne Wilson.
23. INAC closing remarks, electronic copy, submitted by Glen Stephens.
24. INAC closing remarks, hard copy, submitted by Glen Stephens.
25. Tahera position on INAC, submitted by Greg Missal.
26. Tahera plans to which Tahera commits, submitted by Greg Missal, Tahera Diamond Corporation.
27. Closing comments, Tahera Diamond Corporation, submitted by Greg Missal.
28. Department of Fisheries and Oceans closing comments, submitted by Derrick Moggy, Department of Fisheries.
29. Tahera Diamond Corporation Third Quarter Report, submitted by Greg Missal.
- 29(b) Tahera Corporation Annual Report 2003, submitted by Greg Missal.
30. KIA closing remarks, submitted by Geoff Clark.