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February 22, 2023

File: W2015L2-0001

Mark Cliffe-Phillips  
Mackenzie Valley Review Board  
200 Scotia Centre  
Box 938, 5102-50th Avenue  
Yellowknife NT X1A 2N7

Sent by email

Dear Mark Cliffe-Phillips,

**Re: Diavik Diamond Mines (2012) Inc. – Notice of Preliminary Screening Determination – Amendment Application for Water Licence – Mining and Milling – Lac de Gras, NT**

The Wek'èezhì Land and Water Board (Board) met on February 22, 2023 and considered the Licence Amendment Application from Diavik Diamond Mines (2012) Inc. (DDMI) for Water Licence (Licence) W2015L2-0001 in accordance with the *Mackenzie Valley Resource Management Act* (MVRMA).

The Project has previously been assessed through an Environmental Assessment completed in June 1999,<sup>1</sup> the Preliminary Screening Determination dated January 30, 2020,<sup>2</sup> and the Review Board's Report of EA EA1819-01 dated January 2020.<sup>3</sup> DDMI has not proposed changes to the Project. Accordingly, the Board determined that the Project is exempt from preliminary screening under Part 1, Schedule 1, section 2.1 of the Exemption List Regulations to the MVRMA. Consequently, no further preliminary screening was conducted. The Board's Preliminary Screening Determination and Reasons for Decision is attached.

Please contact Ryan Fequet via [email](#) or at (867) 765-4589 with any questions or concerns regarding this letter.

<sup>1</sup> See WLWB Online Registry ([www.wlwb.ca/](http://www.wlwb.ca/)) for [N7L2-1645 - Diavik - Comprehensive Study Report - Jun 99](#).

<sup>2</sup> See WLWB Online Registry for [Diavik – WL Amendment Application – A21 Underground – PS Determination and Notification – Jan 30 20](#).

<sup>3</sup> See Review Board Registry at [www.reviewboard.ca](http://www.reviewboard.ca) for [Report of Environmental Assessment and Reasons for Decision](#).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mason Mantla', written in a cursive style.

Mason Mantla  
Chair, Wek'èezhìi Land and Water Board

BCC'd to: Diavik Distribution List  
Gord Macdonald, DDMI

Attached: Preliminary Screening Determination and Reasons for Decision



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## Preliminary Screening Determination and Reasons for Decision

Water Licence Application	
<b>File Number</b>	W2015L2-0001
<b>Company</b>	Diavik Diamond Mines (2012) Inc.
<b>Project</b>	Diavik Diamond Mine
<b>Location</b>	Lac de Gras, NT
<b>Activity</b>	Mining and Milling
<b>Date of Decision</b>	February 22, 2023

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### 1.0 Decision

In accordance with subsection 124(1) of the *Mackenzie Valley Resource Management Act* (MVRMA), the Wek'èezhì Land and Water Board (WLWB or Board) met on February 22, 2023 to make a preliminary screening determination on the amendment Application<sup>1</sup> from Diavik Diamond Mines (2012) Inc. (DDMI; the Applicant) for Water Licence W2015L2-0001 (Licence)<sup>2</sup> for the Diavik Diamond Mine (Project).<sup>3</sup>

The Board has determined that the Project is exempt from preliminary screening, because the Project underwent an Environmental Assessment (EA), and the Applicant has not proposed changes to the Project.

The Board's determination, including reasons for its decision, are detailed in sections [2.0](#) and [3.0](#).

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<sup>1</sup> The complete application package submitted by the Applicant for Water Licence W2015L2-0001.

<sup>2</sup> See WLWB Online Registry [Diavik - Water Licence - SNP 1645-44 Update - Dec 1 22](#).

<sup>3</sup> The Project is the Diavik Diamond Mine, which is the proposed development, where "development" is defined in Part 5 of the MVRMA as:

"any undertaking, or any part or extension of an undertaking, that is carried out on land or water and includes an acquisition of lands pursuant to the *Historic Sites and Monuments Act* and measures carried out by a department or agency of government leading to the establishment of a park subject to the *Canada National Parks Act* or the establishment of a park under a territorial law."

## **2.0 Background and Scope of Screening**

On October 13, 2021, DDMI submitted an Application to amend its Licence to include progressive reclamation activities associated with pit flooding, and the decommissioning of Dams and engineered structures.<sup>4</sup> On January 26, 2022, the Board determined that the Amendment Application was exempt from preliminary screening.<sup>5</sup> At the end of that Amendment proceeding, the Minister<sup>6</sup> did not approve the Licence that would have included conditions associated with potential decommissioning of collection ponds;<sup>7</sup> instead an amended Licence that included the water use associated with pit flooding was approved by the Minister and issued by the Board.<sup>8,9</sup>

On December 2, 2022, Diavik Diamond Mines (2012) Inc. (DDMI; the Applicant) submitted a new application to amend its Licence.<sup>10</sup> In this Amendment Application, DDMI is requesting to amend its Licence to include progressive reclamation activities associated with the decommissioning of collection ponds.

DDMI submitted an Engagement Log with its Application that outlines the pre-submission engagement completed prior to submission to the Board. The Engagement Log indicates that engagement with Indigenous and non-Indigenous Governments and Organizations took place from March 2022, as part of the virtual and in-person Final Closure and Reclamation workshops hosted by DDMI, to November 2022. The Engagement Log describes that, at minimum, an email was sent to all Affected Parties seeking feedback on the Amendment, and if no response was received follow-ups by call and/or email occurred. High-level concerns and/or feedback received were noted in the Engagement Log, which indicates that no concerns were raised with advancing the Amendment and formalizing their position through the proceeding. However, it is noted that, on November 21, 2022, GNWT-ENR communicated that it was unable to confirm at that time whether regulatory requirements have been met due to time restrictions, but would follow-up with recommendations as soon as possible.

The environmental effects of the Diavik Diamond Mine were first assessed under the Canadian Environmental Assessment Act in 1999. The Comprehensive Study Report produced for this assessment concluded:

The [Responsible Authorities (RAs)] have concluded that with implementation of mitigation measures and follow-up requirements described in this comprehensive study report, the Diavik Diamonds Project will not result in significant adverse environmental effects.<sup>11</sup>

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<sup>4</sup> See WLWB Online Review System (<https://new.onlinereviewssystem.ca/>) for [Type A WL Amendment - Progressive Reclamation](#).

<sup>5</sup> See WLWB Online Registry for [Diavik – WL Amendment – Progressive Reclamation - Preliminary Screening Determination - Jan 24 22](#).

<sup>6</sup> Minister of the Government of the Northwest Territories – Environment and Natural Resources (GNWT-ENR).

<sup>7</sup> See WLWB Online Registry for [Diavik - WL Amendment - Progressive Reclamation - Minister's Decision Letter - Jun 29 22](#).

<sup>8</sup> See WLWB Online Registry for [Diavik – WL Amendment – Increased Water Use – Minister Approval – Nov 9 22](#).

<sup>9</sup> See WLWB Online Registry for [Diavik - WL Amendment - Increased Water Use - Updated Licence - Nov 9 22](#).

<sup>10</sup> See WLWB Online Review System for [Diavik – Type A WL Amendment – Decommissioning](#).

<sup>11</sup> See WLWB Online Registry for [N7L2-1645 - Diavik - Comprehensive Study Report - Jun 99](#) pg. xii.

Since the 1999 Comprehensive Study Report, the scope of the Project was revised to include underground mining at the A21 pit<sup>12</sup> and deposition of processed kimberlite into the open pits.<sup>13</sup>

The Applicant has not proposed changes to the Project, and under Schedule 1, section 2.1 of the Exemption List Regulations to the MVRMA, project areas and activities that have already been subject to Part 5 of the MVRMA, and for which no changes are proposed, are exempt from preliminary screening.<sup>14</sup>

The Project areas and activities that have already been subject to Part 5 are listed below. Further information about these Project areas and activities, and associated impacts and mitigations, is detailed in the Comprehensive Study Report, dated June 1999; the Board's Preliminary Screening Determination, dated January 30, 2020<sup>15</sup>; and the Mackenzie Valley Environmental Impact Review Board's (Review Board) Report of EA EA1819-01, dated January 2020.<sup>16</sup>

#### Previously Screened or Assessed Areas and Activities:

This section of the Boards' Reasons for Decision does not describe all previously screened or assessed areas and/or activities for the Diavik Project. This discussion is limited to the relevant Project areas and activities as described in the Application for re-establishment of surface drainage through decommissioning of the collection pond system.

The Diavik Water Licence was first issued as N7L2-1645 by the Northwest Territories Water Board on August 16, 2000.<sup>17</sup> Since that time, the Licence has been renewed twice (W2007L2-0003 and W2015L2-0001) and has been amended three times. Since the 1999 Comprehensive Study Report, the Project has been modified to include underground mining at the A21 pit<sup>18</sup> and deposition of processed kimberlite into the open pits.<sup>19</sup> These modifications have been subject to Part 5 of the MVRMA.<sup>20</sup> Exempt from Preliminary Screening under Schedule 1, section 2.1 1 of the Exemption List Regulations to the MVRMA, the Licence

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<sup>12</sup> See WLWB Online Registry for [Diavik – WL Amendment Application – A21 Underground – PS Determination and Notification – Jan 30 20](#).

<sup>13</sup> See WLWB Online Registry for [Diavik - WL Amendment - PKMW - Reasons for Decision - Apr 28 21](#).

<sup>14</sup> As per Schedule 1, section 2.1 of the [Exemption List Regulations](#), no preliminary screening is required for:

"A development, or a part thereof, for which a permit, licence or authorization is requested that

(a) was part of a development that fulfilled the requirements of the environmental assessment process established by the *Mackenzie Valley Resource Management Act*; and

(b) has not been modified since the development referred to in paragraph (a) fulfilled the requirements of the environmental assessment process established by the *Mackenzie Valley Resource Management Act*."

<sup>15</sup> See WLWB Online Registry for [Diavik – WL Amendment Application – A21 Underground – PS Determination and Notification – Jan 30 20](#).

<sup>16</sup> See Review Board Registry at [www.reviewboard.ca](http://www.reviewboard.ca) for [Report of Environmental Assessment and Reasons for Decision](#).

<sup>17</sup> See WLWB Online Registry for [N7L2-1645 - Diavik - Water Licence - Reasons for Decision - Aug 21\\_00](#).

<sup>18</sup> See WLWB Online Registry for [Diavik - WL Amendment - A21 Underground - RFD and Recommendation to Minister - Sep 24 20](#).

<sup>19</sup> See WLWB Online Registry for [Diavik - WL Amendment - PKMW - Reasons for Decision - Apr 28 21](#).

<sup>20</sup> See WLWB Online Registry for [Diavik – WL Amendment Application – A21 Underground – PS Determination and Notification – Jan 30 20](#); and see Review Board Registry at for [Report of Environmental Assessment and Reasons for Decision](#).

has also been amended to allow for an increase in water usage related to closure activities.<sup>21,22</sup> The current Water Licence W2015L2-0001 entitles Diavik Diamond Mines (2012) Inc. (DDMI) to:

... use Water, dewater a portion of Lac de Gras, and dispose of Waste, including deposition of Processed Kimberlite in the Mine Workings (A418 and A154), for the purpose of Construction, operation, closure, and Reclamation of the Diavik Diamonds Project in the Lac de Gras area of the Coppermine Watershed, Northwest Territories, as shown on Figure 2.1, (Overall Site Plan, page 13, Diavik Diamonds Project Supporting Documentation Class A Water Licence Application, August 1999) and as discussed in Section 1.3 of the Report of Environmental Assessment and Reasons for Decision (EA1819-01).<sup>23</sup>

In its Application, DDMI indicates its understanding that the amendment Application is exempt from preliminary screening because the re-establishment of natural drainage was assessed as part of the Comprehensive Study Report dated June 1999.<sup>24</sup> DDMI indicates that this activity has been described in approved Closure and Reclamation Plans and is an approved Closure Objective. DDMI also noted the Board's previous Preliminary Screening Determination that considered the reconnection of natural drainage and confirmed it to be exempt under Schedule 1, section 2.1 1 of the Exemption List Regulations to the MVRMA.<sup>25</sup>

The 1999 Comprehensive Study Report describes the plan for water management at closure, including the reconnection of natural drainage to Lac de Gras. This proposed closure activity has not been modified during subsequent Water Licence Amendments to mine A21 underground, deposit Processed Kimberlite into the pits, and increase water usage.

With respect to reconnection of natural drainage, the Comprehensive Study Report describes that "the ultimate contingency (should the closure objectives prove infeasible), would be to collect runoff waters (as during operations) and to continue to treat and discharge the collected water".

## **2.1 Public Record and Regulatory Proceeding**

To assist the Board in its preliminary screening determination for the Project, the Board distributed the Application for public review on December 5, 2023, inviting reviewers to provide comments and recommendations on the Application and the preliminary screening (e.g., on impacts and mitigation measures) using the Online Review System (ORS). A Draft Work Plan was circulated with the Application and proposed that reviewer comments on the Application be due by January 17, 2023.<sup>26</sup> In comments on

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<sup>21</sup> See WLWB Online Registry for [Diavik – WL Amendment – Progressive Reclamation – RFD and Recommendation to Minister – June 2 22](#).

<sup>22</sup> See WLWB Online Registry for [Diavik – WL Amendment – Increased Water Use – Updated Licence – Nov 9 22](#).

<sup>23</sup> See WLWB Online Registry for [Diavik – Water Licence – SNP 1645-44 Update – Dec 1 22](#).

<sup>24</sup> See WLWB Online Registry for [N7L2-1645 - Diavik - Comprehensive Study Report - Jun 99](#).

<sup>25</sup> See WLWB Online Registry for [Diavik – WL Amendment – Progressive Reclamation – Preliminary Screening Determination – Jan 24 22](#).

<sup>26</sup> See WLWB Online Review System for [Diavik – WL Amendment – Decommissioning – Draft Work Plan – Dec 5 22](#).

the Draft Work Plan, EMAB requested an extension to the review comment deadline.<sup>27</sup> The Work Plan was updated accordingly, and reviewer comments were due by January 24, 2023, with responses from the Applicant due February 7, 2023.<sup>28</sup> The Board received comments and recommendations from the Government of the Northwest Territories – Environment and Natural Resources – Environmental Assessment and Monitoring (GNWT-ENR), the Environmental Monitoring Advisory Board (EMAB), Tłı̨chǫ Government (TG), and Deninu K’ue First Nation (DKFN).<sup>29</sup> Board staff also submitted comments and questions for the purposes of clarification. No comments were received regarding the requested exemption from preliminary screening.

Since there were no further requests to extend the reviewer comment deadline, the Board is satisfied that a reasonable period of notice was given to affected communities and First Nations, as required by subsection 63(2) of the MVRMA.

The Board is also satisfied that notice of the Application was provided to the Tłı̨chǫ Government (TG) and that a reasonable period of time was provided for the TG to make representations to the Board in accordance with section 63 of the MVRMA.

The Board also provided notification to the Tłı̨chǫ Government on the Application in accordance with the MVRMA for a “major mining project,” as defined in Chapter 23 of the Tłı̨chǫ Land Claims and Self-Government Agreement. The Applicant and the Tłı̨chǫ Government have communicated in a joint letter to the Board that engagement is ongoing. The letter indicates that more details regarding agreement between DDMI and the Tłı̨chǫ Government under section 23.4.1 of the Tłı̨chǫ Agreement will be provided by the time of Technical Session scheduled in March 2023.

### **3.0 Potential Impacts and Proposed Mitigations**

Although the Board has determined that the Project is exempt from preliminary screening, the Board will consider the potential impacts and proposed mitigations in establishing the Licence conditions. For Board licences and permits in general, potential impacts can be mitigated through existing, standard, and/or project-specific licence and/or permit conditions. These conditions may include requirements for management and monitoring plans that provide detailed information regarding the implementation of mitigation measures and the evaluation of their effectiveness.

All Parties will have an opportunity to provide recommendations to the Board regarding draft conditions. In finalizing the conditions, the Board will consider these recommendations and all of the evidence provided through the regulatory proceeding.

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<sup>27</sup> See WLWB Online Review System for [Diavik – WL Amendment – Decommissioning – Draft Work Plan – Comments – Dec 15 22](#).

<sup>28</sup> See WLWB Online Review System for [Diavik – WL Amendment – Decommissioning – Work Plan – Version 1 – Dec 16 22](#).

<sup>29</sup> See WLWB Online Review System for [Diavik - Type A WL Amendment - Decommissioning](#).

#### 4.0 Conclusion

The Project was previously assessed by an EA (i.e., Comprehensive Study Report) in June 1999,<sup>30</sup> the Board completed a preliminary screening of the Project on January 30, 2020,<sup>31</sup> the Review Board completed an EA of the Project in January 2020,<sup>32</sup> and the Applicant has not proposed changes to the Project. Accordingly, the Board has determined that the Project is exempt from preliminary screening under Part 1, Schedule 1, section 2.1 of the Exemption List Regulations to the MVRMA. Consequently, no further preliminary screening was conducted.

SIGNATURE



February 22, 2023

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**Mason Mantla, Chair**  
**Wek'èezhì Land and Water Board**

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**Date**

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<sup>30</sup> See WLWB Online Registry for [N7L2-1645 - Diavik - Comprehensive Study Report - Jun 99](#).

<sup>31</sup> See WLWB Online Registry for [Diavik – WL Amendment Application – A21 Underground – PS Determination and Notification – Jan 30 20](#).

<sup>32</sup> See Review Board Registry for [Report of Environmental Assessment and Reasons for Decision](#).