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Wekeezhii Land and Water Board
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**RE: Diavik Diamond Mine Inc. (DDMI) Water Licence Renewal Application - MV2025L2-0001,
YKDFN Intervention Submission**

The Yellowknives Dene First Nation (YKDFN) has reviewed the Type A Water Licence(W2025L2-001) and has prepared the following comments.

It is important for the Board and all parties know that the YKDFN comments are based on a central fact – they have lived here long before this mine existed and will be here long after. There was an acceptance that the mine would be built and operated over a period, then would be reclaimed and YKDFN would again be able to use this land as they always had. Impacts to the land and water would not affect our way of life and the successful exercise of our rights would not be infringed or compromised.

Our community's expectation is that while things may be different, our members could return to this core area. As things stand now, YKDFN are deeply concerned that the outcomes of closure will see continued impacts on the environment, harming the return of our people. It is not enough to be 'safe' as the Board and Diavik think of it. For the YKDFN, safe is more than absence of harm. Safe means that our members and their families can go to Ek'a Ti and know that not only will it harm them, but that they can live and prosper.

Máhsı

Matthew Spence

Matt Spence
Chief Executive Officer
Yellowknives Dene First Nation

Yellowknives Dene First Nation

Intervention to the Wek'èezhìi Land and Water Board

For

Diavik Diamond Mines' Water Licence W2025L2-0001

May 20, 2025

SUMMARY OF CORE RECOMMENDATIONS

Recommendation 1: YKDFN does not support site-wide reconnection of sumps until the Specific Effects Study (SES) is complete and all parties can review the matter as part of a proceeding culminating in a Board determination.

Recommendation 2: The Board implements Cultural Use Criteria as Closure Criteria, allowing their achievement to be tied to the return of financial security.

Recommendation 3: The Board add a condition to the WL that requires Cultural Use Criteria be added as a component of SW2 and SW3, including a way to assess stability that will allow for an assessment of successful closure.

Recommendation 4: The Board limits the use of Mixing Zones post-operations, both in terms of the number of mixing zones and the area allowed.

Recommendation 5: The Board add conditions to the license requiring Diavik to provide a rationale explaining why the SES results would not provide further data and improve modelling outcomes (including validating model prediction for the other mixing zones)

Recommendation 6: Seepage and surface runoff should continue to be considered a waste, until Diavik has provided evidence to the Board that it will not impact the aquatic environment or the cultural uses of water.

Recommendation 7: If the Board determines that surface runoff and seepage water are no longer a waste, YKDFN request that the Board require closure criteria that can be developed and approved as a stand-alone submission or as part of the Final Closure and Reclamation Plan (FCRP).

Recommendation 8: The Board review closure criteria (and any other appropriate matters) during the FCRP proceeding rather than using this licence renewal.

Recommendation 9: The Board includes a condition in the Water Licence that any planned or scheduled reduction in sampling effort and or frequency must be approved by the Board prior to implementation.

Introduction

In both past WLWB proceedings and this most recent application, YKDFN has expressed concerns with the project's approach towards aspects of closure. Though we note some progress, more concerning is that we see closure developments running contrary to our interests and previously expressed positions.

That YKDFN's intervention is primarily focused on issues previously resolved seems inefficient. YKDFN has little desire to review the same matters over and over. We want to work with everyone around the table to address the remaining issues, not continue to delve into conflict. Moving forward has far more appeal, particularly given the looming timeline.

Should the proponent wish to look for alternatives and new approaches to meet their interests, YKDFN would certainly be open to discussions on this matter. However, continuing to adhere to an approach that ignores YKDFN's wishes is not productive towards the 'shared mine closure vision' that the company highlighted during the technical session.

PART A – Specific Concerns

Item 1: Reconnection of Sumps

Administrative History

As required by the current WL, Diavik collects all seepage and runoff in ponds and must treat the water prior to discharge. The exceptions are Ponds 2 and 7, which the Board authorized breaches to on the condition that Diavik will complete a Specific Effects Study (SES) to:

"Gather initial confirmatory evidence of modelling predictions, including mixing zone sizes and water quality within the mixing zone. This information may help inform future Decommissioning as well as provide more certainty to the water quality predictions to help address concerns raised by Parties throughout the proceeding."

- March 19, 2024 Reasons for Decision on the Water Licence Amendment – Decommissioning

This is the third time Diavik has requested the WLWB to amend the Water Licence to let seepage and runoff discharge uncontrolled and directly into the Lac de Gras. During the first amendment proceeding, little information was presented to support their request as Diavik indicated this was merely an administrative change to establish a permitted process for pond breaching and that technical information to support approval to breach each pond would come later¹.

In following proceeding, the Water Licence amendment (March 2024), Diavik requested approval to breach every pond. To support this request, Diavik has submitted new information including modeling to predict water quality in Lac de Gras as the result of breaching the containment ponds, including safety

¹ <https://registry.mvlwb.ca/Documents/W2015L2-0001/Diavik%20-%20WL%20Amendment%20-%20Progressive%20Reclamation%20-%20RFD%20and%20Recommendation%20to%20Minister%20-%20June%2022.pdf>

predictions related to predicted water quality and use. Diavik's prediction is that seepage and surface runoff water on the island would be safe for wildlife and for recreational uses such (swimming, camping, bathing, etc.) by people, but that it will not be safe to use as a drinking water source. The use case was established through a Human Health Environmental Risk Assessment conducted by the company that largely seems to have excluded the people of the YKDFN from either the problem formulation, assumption setting, or in a validation of the results.

As part of this license renewal process Diavik has, once again, provided little new information to help address numerous concerns that have been raised repeatedly across multiple regulatory proceedings, many of which were specifically highlighted by the Board in their March 19, 2024 decision².

YKDFN Position Restated

Obviously, our nation would like to see natural drainage restored at the site, . Obviously, we would like to see the company gone. However, these are not achievements by themselves. They mean little unless our larger interests around successful closure outcomes are met, not just these limited tasks. Thus, confidence and certainty are necessary aspects of these goals.

In past license proceedings the Yellowknives Dene have been consistent in their opposition to reconnecting sumps without greater certainty. If there was to be a reconnection, it must be studied and used as a trial for any further connections.

"If collection pond breaching is approved, it should be considered a study rather than a closure option. Testing and modelling should consider impacts from all developments. The end goal is water quality" (YKDFN Intervention, 2024 Diavik Water Licence Amendment)

As discussed above, the Board adopted a compromise between YKDFN's preferred outcome – no reconnection - and the company's proposal – site-wide reconnection - allowing the sumps 2 and 7 to be breached with the condition that further work (the SES) be completed. That work has not yet been completed.

During the current license application, the company has again sought to reconnect the sumps. YKDFN once again restates its objection.

In response to questioning at the technical session regarding the YKDFN position and the desire for certainty that the runoff was acceptable, the project again dismissed and ignored the community desire and focused on the timeline:

"And it would be from my -- certainly from the Company's perspective, a shame if it was -- if that decision was made purely for, like sort of administrative type reasons, when we have a good, robust monitoring and management plan in place to let the work continue on schedule."

- Diavik, April 15th Transcript, P189

The proponent position remains unaltered and focused only on the timeline, despite the Board's previous decision and the positions of most of the Parties. YKDFN's position on this matter is neither

² See page 65-67 of https://lwb-registry-867.s3.ca-central-1.amazonaws.com/Documents/W2015L2-0001/Diavik%20-%20WL%20Amendment%20-%20Decommissioning%20-%20RFD%20and%20Recommendation%20to%20the%20Minister%20-%20Mar%2019_24.pdf

administrative or shameful. It is based on risk – where we seek the risk, for once, not to be borne by the environment and the people. If the project cannot begin to look for alternatives, the consequences of that should not be risk and further impacts to our land, our water and our people.

“I think we're going to learn a lot from these Special Effects Studies coming this year”

- Diavik, April 15th Transcript, P61

YKDFN agrees. Other parties at the table seemed to agree as well. With all parties agreeing on the utility of this process, when combined with the fact that the study will be complete in under two years, YKDFN reiterates its position that the remaining collection ponds should not be reconnected until we can collectively be certain that the release is not detrimental to a successful closure.

Recommendation 1: YKDFN does not support site-wide reconnection of sumps until after the Specific Effects Study (SES) is complete and all parties can review the matter as part of a proceeding culminating in a Board determination.

Item 2: Connecting Community Perspective to Closure Success

The responsible closure of a mine in the NWT is a novel process, with the structures to support successful closure for the people of the NWT and the YKDFN in particular, still maturing. With this understanding, YKDFN are looking to focus the parties and the Board on the need for community perspective as part of the evaluation of success. In the Diavik case, YKDFN argue that there is a need to link traditional knowledge to financial security.

The absence of TK in the final closure assessments is a procedural issue that needs to be resolved. Currently there are two competing lines of evidence on the environmental performance at Diavik – the Board mandated western science-oriented water sampling approach and the TK monitoring camp results, most recently conducted in 2021 and 2024. While Diavik has largely demonstrated success with its Board water quality requirements, the results from the TK Camps cause significant concern. The most recent (2024) camp caught 15 fish, but only two were considered healthy enough for further sampling and consumption. This is reflective of the more widely held set of Elder concerns. Science suggests that the fish should be fine, but the TK science suggests otherwise. YKDFN witness the perceived clash of these lines of evidence and consider it against their own values for closure.

At this point, YKDFN are concerned that the system places the overwhelming reliance on the sampling programs based on western science, with a failure to provide for meaningful incorporation of the concerns founded in TK observations. While these are just two recent data points, this outcome tracks with our elders experience and perceptions of past camps. Amongst their discussions, there are concerns that the problems run deeper than currently observed and are emerging very quickly. They believe that if there was increased monitoring founded on traditional knowledge, the data points would further support what's been happening with the fish camps.

Prioritizing one knowledge system is not consistent with the NWT's environmental system, where western science and traditional knowledge are recognized as different but equal methods of understanding the environment and world around us. Finding a way to reflect the duality of knowledge

within the assessment of a development's closure is the next step in the evolution of our integrated environmental system. All parties should use the best available knowledge in their decision-making.

YKDFN are invested in the success of the site closure – our nation's larger goals of a strong nation living on a healthy Chief Drygeese Territory cannot be achieved without closure. During this proceeding, it has become apparent that there is an outstanding need to develop and incorporate Cultural Use Criteria as Closure Criteria. This requirement is to formally link TK to the license using Closure Criteria and financial security.

Our understanding of the potential refund of financial security is that it will be based largely on RECLAIM tasks and mine components. In YKDFN's view, unless these actions are also supported outcomes verified by traditional knowledge through Cultural Use Criteria in development, security cannot be returned.

We have plenty of examples of failed closures and are resolute on the desired outcomes for this project. While we appreciate the Proponents' vision and demonstrated work to date, we know that the biggest driver of their efforts is the \$199 million in financial security they would like returned. If there's one item that everyone involved in this review agrees on, it is that this is a significant amount of money. And that is reflective of its power – the power to compel effective closure.

Recommendation 2: The Board implement Cultural Use Criteria as Closure Criteria, allowing their achievement to be tied to the return of financial security.

Recommendation 3: The Board add a condition to the WL that requires Cultural Use Criteria be added as a component of SW2 and SW3, including a way to assess stability that will allow for an assessment of successful closure.

Item 3: Mixing Zones and Long-Term Site Use

YKDFN have not and do not support mixing zones as part of the closure plan. This is particularly true of the proposed areas within Lac de Gras. Controlled release of wastes and contaminants was an accepted feature of an operational mine and YKDFN understood that this would be the case during the operations of this project. Our understanding is that the license is seeking the permission to release waste into the receiving environment for years to come, relying on the lake to further absorb this waste.

It has become clear that Diavik believes that, so long as the majority of Lac de Gras is chemically judged to be safe for use, there should be no concern with the areas that are not safe for cultural uses or protective of the local aquatic environment. A position that is fundamentally in opposition to YKDFN's cultural beliefs and expectations responsible environmental monitoring and management.

As this project moves into closure, the ongoing release and deposition corrupts the YKDFN's goals for the site. The YKDFN does not believe that a threshold of acute toxicity represents an appropriate minimum standard for environmental protection. It would not be acceptable during operation of the mine, when the company is present to quickly implement mitigations. Less stringent thresholds for environmental protection are inappropriate for closure.

Discussion around acute or chronic toxicity acceptance push against our goals – that the lake, and the uses it supports, will be as it was. Creating areas where some portion will likely range from unsafe to harmful for humans, wildlife and aquatic life does not meet our expectations for closure.

Lastly, as previously mentioned, evidence and outcomes from the TK camps are at odd with the outcomes observed through science-based EQCs, injecting uncertainty regarding the utility of these predictions. Even if the predictions are 'right', impacts to YKDFN's cultural values can occur.

Recommendation 4: The Board limit the use of Mixing Zones post-operations, both in terms of the number of mixing zones and the area allowed.

Issue 4 - WQ Modeling

The application, the draft water license, and the associated supporting documents contain uncertainties, lack vital information and have proposed conditions that cause the YKDFN significant concerns about future water quality and our ability to resume cultural activities in the area following closure.

At multiple points in this process, comments were provided around the uncertainty and reliability of model predictions, with recommendations that outcomes/results of the SES could improve model calibration and provide improved predictions. Diavik asserted that this was not a valuable use of resources, without providing evidence-based rationale for their position. The company refused to consider the possibility that results of the SES could meaningfully improve model prediction.

YKDFN believes that Diavik's approach burdens the parties with additional reviews to identify risks and areas for improvement, and then convince the Board to require appropriate steps from the proponent, rather than the proponent supplying that work which removes uncertainty and helps to demonstrate their position. This is an unacceptable approach to responsible environmental monitoring and management. It is the responsibility of the company to provide monitoring results as evidence that their predictions are valid including the absence of potential environmental or cultural risks.

Recommendation 5: The Board add conditions to the license requiring Diavik to provide a rationale explaining why the SES results would not provide further data and improve modelling outcomes (including validating model prediction for the other mixing zones)

PART B – General Concerns

Definition of Waste: YKDFN agrees with the past board decision that runoff from this site is waste.

The Board has not been convinced that the proposed Discharges will not result in degradation or alteration of the quality of the water to an extent that is detrimental to its use by people or by an animal, fish, or plant. The Board concludes that there is insufficient evidence at this time to determine that the discharge will not be a Waste.

2024 Diavik Water License Amendment, WLWB Reasons for Decision

Given Diavik's prediction that discharge of water from the site will result in portions of Lac de Gras being degraded to a point that they are not safe for human consumption or harmful to aquatic life, there is currently no evidence for it to be classified as anything but a waste. Even if the closure criteria were approved the water would still meet the definition of waste. YKDFN believe that until Diavik can demonstrate to the Board that containment pond water is no longer a waste, discharge must be regulated by EQC's as it is in the current Water Licence.

"waste" is defined as:

- a) any substance that, if added to water, would degrade or alter or form part of a process of degradation or alteration of the quality of the water to an extent that is detrimental to its use by people or by any animal, fish or plant*
- Section 1 of the *Waters Act* and section 51 of the *MVRMA*

This is not a matter of acutely or chronically toxic – we need to be able to tell our Elders and members with confidence that drainage from the site is not affecting water quality and that it is safe to live as they always have, to exercise of their rights in this area. YKDFN continues to apply a precautionary approach.

Recommendation 6: Seepage and surface runoff should continue to be considered a waste, until Diavik has provided evidence to the Board that it will not impact the aquatic environment or the cultural uses of water.

Recommendation 7: If the Board determines that surface runoff and seepage water are no longer a waste, YKDFN request that the Board require closure criteria that can be developed and approved as a stand-alone submission or as part of the Final Closure and Reclamation Plan (FCRP).

Closure Planning vs. License Approvals: As this license proceeding comes to a close, YKDFN is looking forward to focusing on the FCRP proceedings and outcomes, being completed concurrently to this license renewal. Though some overlap is unavoidable as these processes reinforce each other, administratively YKDFN feels it best and most effective to try and keep the decisions for operations within this renewal proceeding and questions about closure to the concurrent but separate FCRP effort before the Wek'èezhii Land and Water Board (WLWB).

Within the Proponent's responses to YKDFN's License Application review, there was a consistent response that YKDFN issues were best oriented to process supporting final closure plan development. YKDFN largely accepts this position, except for those matters explicitly discussed above, but believes that the same is true for closure matters for the company – we should use the appropriate proceeding for the

appropriate actions. Unless consensus exists and there is a particular time sensitive requirement, license and operational matters should be handled with the license renewal, while the closure matters should be handled within the FCRP proceeding.

Recommendation 8: The Board review closure criteria (and any other appropriate matters) during the FCRP proceeding rather than using this licence renewal.

Reduced Sampling Effort and Frequency: Throughout the Draft Licence, there are numerous instances where Diavik has added prescribed durations for a specific level or sampling effort (i.e. SNP stations and AEMP). In response to concerns/comments Diavik assured reviewers that this was merely for planning purposes.

While the YKDFN understand and support the rationale behind reduced sampling effort and frequency, we want to ensure that they are always evidence-based decisions. YKDFN wants to ensure that decisions are made actively, based on appropriate information, not simply due to the passage of time. YKDFN believes that the company must receive Board approval prior to any reduction in sampling effort or frequency.

Recommendation 9: The Board include a condition in the Water Licence that any planned or scheduled reduction in sampling effort and or frequency must be approved by the Board prior to implementation.

Closing

These mines have changed our relationship with the land. However, the key question now is what that relationship will look like in the future. This is why YKDFN needs certainty, why we seek confidence and assurances for what will come. It is these assurances that represent the cornerstone of the future, ensuring that this land will provide for our people.

YKDFN sense that this is the final license process where we can alter course and change aspects of the closure plan. It is these decisions that the YKDFN members will live with. Already our elders are reluctant to trust the fish and water, and its from that foundation that we are making recommendations for the future.

The Company want their security money back – it will soon be the driving factor behind the remaining decisions at site. YKDFN wants them to get that money back, but on terms that meet with the promises and commitments of the past and our ability to use the land going forward. Impacts during operations were expected. Ongoing affects into the future? That is not acceptable.

YKDFN will not support any license that features a future with degraded water quality or perpetual impacts to our values. This is not some trite concept – we must take care of the land and water and it will take care of us. It is a pre-requisite for our nation to be healthy. Compromising on this is a compromise of the future.

As this Intervention closes, YKDFN appreciate the efforts of everyone and want to state that we can work together towards a “shared closure vision”. But this means that the company needs to understand our desires in this process. At times the water licensing process can seem adversarial and issues can be difficult to work through. In closing, we want to highlight the positive. The development of Cultural Use Criteria and the future linkage to security is part of the positive developments for the future of this site. YKDFN wish to recognize that engagements with Diavik have been more fruitful and important progress has been made regarding our collective interests. As an example, YKDFN would like to highlight our engagement of March 28th, 2025, where we made progress towards YKDFN’s perspective on Cultural Use Criteria. We hope to have further discussions and engagements like these, particularly on how these discussions can develop closure criteria and then work towards how these can be used to guarantee the viability of a healthy and productive environment.