



February 27, 2026

Distribution List
Parties to Diavik Environmental Agreement
Environmental Monitoring Advisory Board

Consultation on proposed EMAB Wind-Down Under Section 18.3 of the Diavik Environmental Agreement

This letter is to inform you that the Government of the Northwest Territories' Department of Environment and Climate Change (GNWT-ECC) is initiating a consultation process with you regarding the proposed wind-down of Environmental Monitoring Advisory Board (EMAB).

On January 28, 2026 GNWT-ECC received a proposal (Attachment A) from Diavik Diamond Mines Inc. (2012) (DDMI), requesting that I set a schedule for the wind down and conclusion of the Advisory Board, as per Article XVIII, section 18.3, of Diavik Environmental Agreement (EA). For reference, section 18.3 states:

Once Diavik Diamond Mines (2012) Ltd. (DDMI) has ceased Commercial Production at the Project, the Minister may, in his/her discretion, and following Consultation with the Parties and the Advisory Board, do either or both of the following:

(a) relieve DDMI of its responsibilities and obligations arising from this Agreement to the extent deemed by the Minister to be reasonable in the circumstances; and

(b) set a schedule for winding down and concluding the operation of the Advisory Board.

In its letter, DDMI proposes two options:

- **Option 1 - Immediate Wind-Down:** EMAB operations conclude at the end of production. Remaining or unused funds would be directed to closure-related purposes, including independent technical reviews, the Traditional Knowledge Monitoring Program, or direct capacity funding. DDMI remains open to providing additional funding for these purposes beyond 2026-2027, if reasonably requested. GNWT-ECC notes this option would not take effect until consultation is completed and a Minister's decision is made.

.../2

- **Option 2 - Transitional Wind-Down (by March 31, 2027):** EMAB continues temporarily to support closure-phase needs. The Minister would define EMAB's role and required workplan. Any unused or unnecessary funds would be reimbursed to DDMI and reallocated for closure-phase purposes.
- **Alternative:** If neither option is adopted, the Minister may propose another wind-down schedule with clear roles, responsibilities, and funding aligned to closure-phase regulatory needs.


As required under section 18.3 of the EA, as the Minister responsible, I am initiating consultation with all Parties and EMAB regarding this matter and invite you to submit comments, concerns, or alternative recommendations regarding the proposed EMAB wind-down.

Parties have 45 days from the date of this letter to review and submit feedback, with an additional 30 days for information requests, if required. I will then make a decision within 45 days. Any concerns or feedback received during this process will be given full and thorough consideration prior to any decision being made.

Please provide your response in writing to Nathalie Oldfield, Manager, Environmental Impact Assessment at Nathalie.Oldfield@gov.nt.ca by **April 13, 2026**. If you have any questions, please contact Nathalie Oldfield.

Thank you for your attention to this matter.

Sincerely,



Jay Macdonald
Minister
Environment and Climate Change

Attachment

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28 January 2026

Subject: EMAB wind-down at the end of commercial production

Dear Honourable Minister Jay Macdonald and Deputy Minister Robert Jenkins,

As communicated in our 11 November 2025 letter to Deputy Minister Robert Jenkins, enclosed, you will find DDMI's proposal for a wind-down schedule for EMAB as per section 18.3(b) of the Environmental Agreement (EA).

The document also includes the results of engagement with the Parties that have taken place since DDMI's letter in 2022 requesting that the Minister initiate the consultation process under section 18.3¹ of the EA.

Please note that, for transparency, a draft of this proposal was shared with the Indigenous Parties to the Environmental Agreement in early January. DDMI understands that the Minister will consult with each of the Indigenous Parties directly through this process and respectfully defers to each of the Parties to communicate their positions directly to the Minister.

As a reminder of the context, DDMI will cease commercial production in March 2026. As such, we are seeking relief from the Minister from the financial obligations under section 4.8 of the EA. DDMI's rationale for this request is rooted in the language of the EA and summarized below.

¹ Attachment D – DDMI's Engagement on EMAB's Future

- 1. Winding down EMAB provides regulatory simplification by removing duplication.**

Section 13.2 of the EA is clear that the provisions of the EA are not meant to duplicate regulatory requirements. Since 2000, the GNWT has undergone transformative legislative and regulatory reforms which have filled the gaps that existed when the EA was signed. The robust, transparent, and inclusive co-management regulatory regime we have in the NWT today does not require an independent oversight body. DDMI strongly encourages the Minister to consider EMAB's wind-down as an opportunity to remove duplication and demonstrate regulatory simplification.
- 2. The funds that EMAB spends could be used more efficiently to benefit the Indigenous Parties.**

Since 2000, DDMI has provided over \$16 million in funds to EMAB. EMAB's overhead costs far outstrip the amount spent on material or work that directly serves Indigenous Parties, which is almost exclusively limited to technical reviews. DDMI believes that this work could be conducted more efficiently outside of EMAB's structure either through directly contracted independent reviewers, the WLWB, the TK Monitoring Program, or through direct capacity funding agreements where reasonably requested by Indigenous Parties. DDMI is continuing to have these discussions directly with the Indigenous Parties.
- 3. EMAB has not meaningfully demonstrated what role they will play during closure.**

DDMI has been engaging with Indigenous Parties since 2022 at the Deputy Minister's request on what EMAB's role through closure should look like. In 2023, DDMI funded EMAB to complete a *Future Role of EMAB workshop* to further define this. DDMI has not seen any evidence of EMAB making meaningful progress on the recommendations from this report. In DDMI's view, EMAB has been unable to clearly demonstrate what value their ongoing role brings to the Parties to the EA throughout the closure phase beyond providing technical reviews. As outlined above and in the contents of this proposal, this work is duplicative of the mandates held by the GNWT, ECCC, and WLWB under the co-management regime that exists today.

DDMI is of the view that the EA clearly contemplates the wind-down of EMAB with the cessation of commercial production. It is also clear from Section 13.2 that the EA contemplated the evolution of the regulatory and legislative regime in the NWT over the course of the EA which would warrant adjustments to avoid duplication. DDMI is the first of the major diamond mines to go through a planned closure under the co-managed regulatory regime that exists today in the NWT. Demonstrating how this can be done successfully is equally important to the credibility of Rio Tinto as an operator, but also to the GNWT and the WLWB as the regulators.

In the attached proposal, DDMI has provided two options for the Minister's and Parties' consideration regarding a wind-down schedule for EMAB. DDMI respectfully requests that the Minister consider the legislative and regulatory evolutions that have occurred since EMAB was formed, and the opportunity for regulatory simplification where EMAB's mandate has become duplicative of other regulatory mandates in the co-management regime that exists today - especially in the closure context where environmental risks are lowered and where EMAB has been unable to clearly demonstrate their continued role. If during the consultation process, the Minister requires any more information or clarification of DDMI's position or the options

presented, please contact us and we will provide timely responses.

Respectfully,



Matthew Breen
Chief Operating Officer
Rio Tinto Diavik Diamond Mines Inc.

CC:

Gord Stephenson, General Manager, Closure, DDMI

Sean Sinclair, Manager, Closure, DDMI – EA Party Representative

Tara Marchiori, Manager, CSP, DDMI – EMAB Board Member, DDMI

Laura Worsley-Brown, Manager, Communications and Government Relations, DDMI

Amanda Annand, Senior Advisor, Communities & Social Performance, DDMI

Nathen Richea, ADM Regulatory, Assessment, and Authorizations, GNWT-ECC

Rick Walbourne, Director, Regulatory and Permitting, GNWT-ECC

Nathalie Oldfield, Manager, Environmental Impact Assessment, GNWT-ECC

EMAB Wind-down Proposal

Presented to:

The Honourable Minister Jay Macdonald and Deputy Minister Robert Jenkins

By:

Matthew Breen, COO, Rio Tinto Diavik Diamond Mines Inc.

28 January 2026

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Rationale for EMAB's Wind-down

The Environmental Monitoring Advisory Board (EMAB) was established under the Environmental Agreement concluded between the Parties in 2000 (EA) as an independent monitoring body for Diavik mine and regulators overseeing the Diavik project (See Article IV of the EA).

Section 18.3(b) of the EA enables the Minister to set a wind-down schedule for EMAB at the end of commercial production and Diavik Diamond Mines Inc. (2012) (DDMI or Diavik) is requesting this process be initiated.

When DDMI entered into the EA in 2000, the company's expectation was that EMAB would be a forum where all Parties, particularly the Indigenous Parties, could identify concerns and work towards cooperative solutions. EMAB's mandate was intended to provide confidence to Indigenous Parties that the environmental protections in the EA were in place and functioning correctly.

However, since 2000, the Northwest Territories (NWT) has undergone transformative legislative and regulatory reforms in resource management. These include the establishment of the co-management regime under the *Mackenzie Valley Resource Management Act*, modern land-claim agreements, the devolution of federal powers to the Government of the Northwest Territories (GNWT), the introduction of robust environmental legislation, and the establishment of the Wek'èezhii Land and Water Board (WLWB) through the Tłıchǫ Agreement. This evolution of the regulatory regime has arguably resulted in the most participatory, comprehensive and transparent regulatory framework in Canada.

DDMI plans to cease production in March 2026. In anticipation of this closure date, DDMI sent a letter to the Deputy Minister in 2022 to initiate the consultation process under section 18.3 of the EA. DDMI was instructed at that time to first engage with Indigenous Parties prior to providing a proposal to the Minister¹. DDMI has been actively engaging with the Indigenous Parties on the role of EMAB through closure since 2022.

With this proposal, DDMI respectfully requests that the Minister formally initiate the consultation process to set a wind-down schedule for EMAB effective as soon as practical after the cessation of production, taking into consideration the options set out below. DDMI's rationale for EMAB's wind-down is outlined below.

1. Winding down EMAB provides regulatory simplification by removing duplication.

DDMI acknowledges the necessary role EMAB played during the early years of the EA when regulatory reforms and governance structures were still developing. However, the regulatory landscape of the NWT has matured significantly since then. Today, EMAB's oversight function largely duplicates the mandates of the GNWT, the Government of Canada, and the WLWB, all of which provide environmental protection and monitoring under the existing co-management regime. Attachment A details the legislative and regulatory changes in the NWT since EMAB's inception, provides an overview of the responsible regulators for Diavik, including a summary of the scope of what they regulate and oversee, and details duplications between those regulators and EMAB.

This duplication in oversight is particularly pronounced in the closure context. As Diavik approaches the cessation of production in March 2026, site activities and environmental risk drivers will materially decline, with no further ore extraction, no processing or processed kimberlite deposition, no mine dewatering, less hydrocarbons stored and used on site, less equipment and people activity and significantly reduced water use and deposition of waste.² Closure oversight, including approval of management plans, review of monitoring results, assessment of Reclamation Completion Reports, Performance Assessment Reporting, and decisions relating to the return of financial security, falls squarely within the mandates of the WLWB, the GNWT, and the Government of Canada through established regulatory processes, including the review of the Final Closure and Reclamation Plan

¹ Correspondence included in Attachment C.

² See DDMI's integrated closure schedule in Table 4, Attachment B

(FCRP) V1.1.³ As a reference, the table in Attachment B breaks down DDMI's anticipated reporting requirements and the corresponding responsible regulator through closure.

In DDMI's experience, EMAB's extensive and often repetitive comments in regulatory processes, and regularly granted requests for extensions, result in prolonged regulatory timelines. These delays have direct operational and cost impacts on DDMI. The WLWB also commented on these challenges in its Reasons for Decision on FCRP V1, stating "[t]he lack of an effective working relationship between DDMI and EMAB and the inability to provide focused recommendations is contributing to unnecessary effort from the Board's staff and often adds more time to the public review process."⁴ Part 2 of Attachment A details these challenges.

DDMI understands that under the NWT's current regulatory framework, proponents of new mines are likely not required to establish independent environmental oversight bodies. In DDMI's view, EMAB's role is no longer necessary to address the gaps that previously existed regarding regulatory oversight, environmental protection, the inclusion of Traditional Knowledge, or communication with Indigenous Parties. DDMI believes that there is an opportunity for the Minister to support regulatory simplification by recognizing that EMAB's role is duplicative of the mandates held by the GNWT, WLWB, and the Government of Canada in the co-management regulatory regime that has evolved and strengthened since EMAB's inception. In this light, a Ministerial wind-down of EMAB would:

- Reduce regulatory duplication and administrative burden without compromising environmental protection or opportunities for Indigenous Party participation in regulatory processes.
 - Indigenous Parties directly participate in regulatory proceedings for Diavik.
 - DDMI also has formal relationships with the Indigenous Parties through Participation and Closure Agreements to ensure that there is a forum for ongoing engagement through closure.
 - DDMI's Traditional Knowledge (TK) Monitoring Program will provide a way for Indigenous Parties to directly participate in the monitoring and assessment of the Diavik site through closure.
- Enhance regulatory efficiency, supporting timely decision-making and operational certainty.
- Demonstrate a commitment to improving the efficiency and effectiveness of GNWT's regulatory framework in response to the Standing Committee on Economic Development and Environment⁵ findings.
- Align with section 13.2 of the EA⁶ which states that the provisions of the EA are not intended to duplicate the requirements of any Regulatory Instrument, and if there is duplication, meeting the requirements of the Regulatory Instrument shall be accepted as compliance with the requirements of the EA. Part 1 of Attachment A provides a table which documents the current aspects of the EA under EMAB's mandate that are duplicated by other Regulatory Instruments.

2. The funds EMAB spends could be used more efficiently to benefit the Indigenous Parties.

Since the year 2000, DDMI has provided over \$16 million in funds to EMAB. Despite its broad mandate under the EA, EMAB has chosen to focus almost exclusively on its role of a public watchdog and intervenor in the regulatory process through independent technical reviews (see Part 1 of Attachment A).

The EA is clear that EMAB operates independent of the Parties⁷; accordingly, EMAB does not

³ [Diavik - Final CRP - Version 1.1 - Main Report - 1 of 37 - Jul 18_25.pdf](#) (Attachment B – Change Log)

⁴ [Diavik - Final CRP - Version 1 - Reasons for Decision - Jul 19_24.pdf](#)

⁵ [Report on the Review of Land Use Permitting and Water Licensing Regulatory Framework in the Northwest Territories](#)

⁶ [signed environmental agreement.pdf](#)

⁷ EA 4.2: The Advisory Board shall operate at arm's length and independent from the Parties, and shall perform its functions consistently with the purposes and guiding principles in Article I.

represent the Indigenous Parties. At the same time, Indigenous Parties now have significantly more capacity and resources than they did when EMAB was established to participate directly in regulatory processes and have demonstrated capabilities and interest to directly intervene without assistance from EMAB. Most Indigenous Parties now provide their own recommendations directly to the WLWB in their review of DDMI's plans, applications, or reporting.⁸

This evolution is further reflected in the fact that DDMI increasingly receives capacity funding requests directly from Indigenous Parties who want to do their own technical reviews. These requests reflect that Indigenous Parties see value in establishing their own positions independent of EMAB's.

By contrast, EMAB's technical reviews come with unacceptably high overhead costs and limited direct benefits to Indigenous Parties. In 2023 and 2024, approximately 70% of EMAB's budget was allocated on fixed to overhead costs including administration, staffing, office space, and Board member honoraria and travel. Only approximately 30% of the remaining budget was dedicated on technical reviews and communications products that may have direct value to Indigenous Parties.

If the Minister and Indigenous Parties determine that independent technical reviews are required for certain aspects of DDMI's closure, DDMI believes that such reviews could be conducted more efficiently outside of the existing EMAB structure. This could be achieved either by:

- a) DDMI funding independent technical panels as part of the WLWB review process (as is already required for the Processed Kimberlite Facility and Processed Kimberlite to Mine Working Project through the Diavik Geotechnical Review Board and the Independent Review Panel), and/or
- b) DDMI providing additional funding for independent scientific monitoring or technical reviews through the TK Monitoring Program and/or
- c) Direct capacity funding to Indigenous Parties as reasonably requested.

DDMI is actively discussing these options directly with Indigenous Parties as part of our engagement on a wind-down proposal for EMAB.

Separate from technical review functions, EMAB's mandate includes engaging with Indigenous Parties to provide information about the state of the environment around Diavik. In practice, however, aside from the Annual Report, DDMI is not aware of how EMAB provides such information to communities, or receives feedback from communities, other than through its own Board members. Furthermore, although EMAB is provided annual funding for Community Engagement, these funds are regularly reallocated. EMAB has not undertaken meaningful community engagement since 2018⁹ and continues to refer to COVID limitations and budget restrictions as reasons for this.

In light of the above, EMAB's current outputs are limited, and its funding would, in DDMI's view, be more effectively deployed through alternative mechanisms that deliver clearer, more direct benefits to Indigenous Parties.

3. EMAB has not meaningfully demonstrated what role they will play during closure.

DDMI has been engaging directly with Indigenous Parties since 2022 on what role EMAB could have through closure (see details of engagement in Attachment D).

DDMI and the Indigenous Parties were hopeful EMAB could lead the implementation of the TK Monitoring Program, which would have provided a clear role for EMAB during closure. While EMAB did make efforts to draft a proposal for the development of the TK Monitoring Program for Diavik closure, DDMI and EMAB were not able to come to an agreement on a Terms of Reference for this work as EMAB would not accept the budget or scope constraints from DDMI. This dynamic has played

⁸ See Table 2 in Attachment A

⁹ See Part 2 of Attachment C

out multiple times in the budget disputes over the years between EMAB and DDMI¹⁰. DDMI has since advanced the TK Monitoring Program development directly with Indigenous Parties and will not be revisiting the implementation of the TK Monitoring Program through EMAB¹¹.

DDMI also funded the opportunity for EMAB to strategically consider their role in closure via the 2023 Future of EMAB workshop, as directed by the Indigenous Parties. In DDMI's view, EMAB has not made meaningful progress on the recommendations from this report.¹² Specifically, EMAB has not demonstrated improving two-way communication with communities or fostering cooperative approaches among the Parties, nor was it successful in taking over the development of the TK Monitoring Program.

Further, EMAB's 2025-2027 budget and workplans have not evolved to consider closure and that the Strategic Plan expired in 2024 without replacement. These omissions confirm that EMAB has not considered or adjusted its approach going into closure. From DDMI's perspective, EMAB has not taken the necessary steps to adapt its mandate, priorities, or activities to reflect the closure of Diavik. Based on the record of engagement and outcomes to date, EMAB has not demonstrated that it provides a clear or tangible value to the Parties during the closure phase.

Proposed Wind-down Options for EMAB

For the reasons set out above, including the maturity of the regulatory regime, the duplication of EMAB's mandate, the inefficient use of funding, and EMAB's failure to define a meaningful role during closure, DDMI submits that the conditions contemplated under section 18.3(b) of the Environmental Agreement are met and that a wind-down of EMAB is warranted. Accordingly, DDMI submits the following wind-down options for the Minister's and Indigenous Parties' consideration.

Option 1 - Wind-down of EMAB by 31 March 2026 (DDMI's preferred option):

DDMI is proposing that EMAB be wound down at the end of commercial production, by 31 March 2026. This approach aligns with the structure and intent of section 18.3(b) of the EA and reflects the transition of Diavik from operations to closure, during which environmental oversight, monitoring, and compliance functions are addressed through existing regulatory and co-management mechanisms.¹³

As for the funds allocated to EMAB by DDMI, DDMI notes that both the EA and EMAB's by-laws reflect a consistent and deliberate intent regarding the treatment of funds provided for EMAB's operations. The EA contemplates the reallocation of unused funding through subsequent budgets, while EMAB's by-laws governs the reimbursement of remaining funds in the event of dissolution or surrender of the Society's certificate of incorporation.

In particular, section 14(a) of EMAB's by-laws which states:

Upon dissolution of the Society, or surrender of its certificate of incorporation, any funds remaining after payment of all debts shall be distributed among the Parties who have provided funds for the operation of the Society, in proportion to the amount of funding provided. Any other assets and information shall be distributed according to the decisions made by the Society.¹⁴

Consistent with that framework, and with the funding logic under the EA and EMAB's bylaws, DDMI requests reimbursement of DDMI's payment of the portion of EMAB's approved budget beyond the effective date of EMAB's wind-down, reflecting that those funds are no longer required for EMAB's

¹⁰ Recent budget disputes which required Minister resolution included: 2009-2011, 2011-2013, 2013-2015, 2015-2017, 2025-2027; in all instances the Minister selected the budget from DDMI

¹¹ Please see Table 1 column h) in Attachment A for further context on EMAB's track-record regarding the facilitation of TK Monitoring.

¹² Attachment D – *Future Role of EMAB* – workshop report (2023)

¹³ See details in Part 1 of Attachment A and Attachment B

¹⁴ EMAB is a Society incorporated under the *Societies Act* in the NWT.

mandate in relation to Diavik, and are not intended to be retained where that mandate has been wound down.

In this scenario, DDMI commits to setting aside the funds reimbursed for the fiscal year of 2026-2027 to be used at the direction of the Indigenous Parties and the Minister for reasonable and closure-related purposes in a manner that is proportionate and fiscally prudent, and avoids strict duplication of existing regulatory oversight. DDMI proposes that the mechanism for using these funds could be through:

- a) Funding independent technical reviews as part of the WLWB or GNWT review processes; and/or
- b) Augmenting funding for use through the TK Monitoring Program (additional monitoring, technical reviews/studies, etc.); and/or
- c) Direct capacity funding to Indigenous Parties.

For clarity, following the wind-down of EMAB, including beyond the fiscal year 2026-2027, DDMI remains open to providing additional funding beyond the wind-down of EMAB and in the future for independent technical reviews through the WLWB, the Traditional Knowledge Monitoring Program, or direct capacity funding to Indigenous Parties, where such funding is reasonably requested and aligned with closure-phase oversight needs.

Option 2 – Transitional wind-down by 31 March 2027:

Alternatively, if following consultation with the Parties, the Minister determines that EMAB should continue for a limited period in order to meet the Parties' closure-phase needs in a fiscally responsible manner, then DDMI proposes a transitional wind-down under which EMAB would continue to be funded until the end of the currently approved budget cycle, with EMAB fully wound down by 31 March 2027.

In that event, DDMI submits that clarity regarding EMAB's role during the transitional period would be important. In particular, DDMI requests that the Minister:

- a) Specify in writing the aspects of EMAB's mandate under the EA that are not covered by the regulatory oversight that already exists for Diavik's closure after March 2026 and what role EMAB would play in closure, to ensure that the EA and EMAB do not cause any duplication with the requirements of any Regulatory Instrument, as per section 13.2 of the EA; and
- b) Require EMAB to provide a detailed workplan and cost breakdown that is commensurate to any regulatory oversight gaps defined by the Minister, to ensure EMAB manages and conducts its affairs in a fiscally prudent, reasonable and cost-effective manner and shall endeavour wherever possible to reduce the cost of fulfilling its responsibilities, including by avoiding the duplication of monitoring and other activities being conducted by DDMI or governmental agencies or departments, as per section 4.8(c) of the EA.

With respect to funding, DDMI notes that the same governance principles apply under a transitional wind-down as under Option 1. Funds provided to EMAB are intended to support its active mandate in relation to Diavik. Accordingly, to the extent that any portion of EMAB's approved budget paid by DDMI remains unused or becomes unnecessary as EMAB's activities are reduced or concluded, DDMI submits that those funds should be reimbursed to DDMI.

As with Option 1, DDMI remains open to providing additional funding following the wind-down of EMAB, including beyond the 31 March 2027, for independent technical reviews through the WLWB, the Traditional Knowledge Monitoring Program, or direct capacity funding to Indigenous Parties, where reasonably requested.

If none of these options are accepted by the Minister, DDMI requests that the Minister propose an alternate wind-down schedule as per Section 18.3(b) of the EA for consideration by the Parties. In that event, and consistent with the approach set out under Option 2, DDMI respectfully submits that it would be appropriate for the Minister to clearly define EMAB's role during the closure phase, including

by identifying in writing the aspects of EMAB's mandate under the EA that are not addressed by existing regulatory oversight, and requiring EMAB to provide a corresponding workplan and cost breakdown commensurate with that defined role. This would support regulatory coherence, fiscal prudence, and ensure that EMAB's activities during closure complement—rather than duplicate—the mandates of the WLWB, the GNWT, and the Government of Canada, in accordance with the EA.

DDMI respectfully requests that the Minister consider the legislative and regulatory evolutions that have occurred since EMAB was formed, and the opportunity for regulatory simplification where EMAB's mandate has become duplicative of other regulatory mandates in the co-management regime that exists today - especially in the closure context where environmental risks are lowered and where EMAB has been unable to clearly demonstrate their added value.

Attachment A

Part 1: Regulatory Oversight

Since 2000, the Northwest Territories has undergone major legislative and regulatory reforms related to mining operations. These changes emphasize environmental protection, Indigenous rights, and territorial control following devolution.

Key Legislative and Regulatory Reforms

- a. **Mackenzie Valley Resource Management Act (1998)**¹⁵ – Established the co-management regulatory system within the Mackenzie Valley Region as a result of modern land claim negotiations.
- b. **Tłıchq Agreement (2005)**¹⁶ – Established the Wek'èezhii Land and Water Board (WLWB) to ensure resource development in Wek'èezhii respects Tłıchq rights, culture, and environmental stewardship.
- c. **Mackenzie Valley Land Use Regulations (2009)**¹⁷ – Establishes regulations for all uses of land in the Mackenzie Valley region.
- d. **Species at Risk (NWT) Act (2009)**¹⁸ – Establishes territorial framework for listing and protecting species at risk.
- e. **Devolution Act¹⁹ & Agreement (2014)** – Transfers land and resource management from federal to GNWT. (Source: Canada/GNWT)
- f. **Wildlife Act (2014)**²⁰ – Establishes modernized wildlife management; requires Wildlife Management and Monitoring Plans, permits for activities affecting wildlife, and integration of Traditional Knowledge.
- g. **Waters Act²¹ and Waters Regulations²² (2014)** – GNWT assumed water licensing authority post-devolution.
- h. **Mineral Resources Act²³ (2019)** – First territorial statute governing mineral rights, royalties, and Indigenous benefits. (Source: GNWT)
- i. **Public Land Act (2019)**²⁴ – Consolidates land administration; regulations pending. (Source: GNWT)

¹⁵ [M-0.2.pdf](#)

¹⁶ [Tlıcho Land Claims and Self-Government Act](#)

¹⁷ [SOR-98-429.pdf](#)

¹⁸ [Species at Risk \(NWT\) Act](#)

¹⁹ [Northwest Territories Devolution Act](#)

²⁰ [Wildlife Act](#)

²¹ [Waters Act](#)

²² [Waters](#)

²³ [Bill 34](#)

²⁴ [Bill 46](#)

Diavik's Regulators

Under the *Mackenzie Valley Resource Management Act* and the Tłı̄chǫ Agreement, the WLWB regulates and oversees compliance of the following within the Wek'èezhii region where Diavik is located.

- a. Land Use Permits – Exploration, construction, and surface activities.
- b. Water Licences – Withdrawal, discharge, and water quality compliance.
- c. Environmental Protection – Waste management, spill contingency, closure and reclamation plans.
- d. Security & Financial Assurance – Reclamation security deposits.

The GNWT also directly regulates operational and closure aspects of Diavik under:

- a. The Surface Leases including closure securities.
- b. The Environmental Agreement including closure securities.
- c. The Wildlife Act.
- d. Enforcement of permits regulated under the WLWB.

In addition to aspects above which are regulated by the WLWB and GNWT, the Federal Department of Fisheries and Oceans (DFO) and Environment and Climate Change Canada (ECCC) regulate and enforce aspects of the Diavik mine under various Federal Acts including:

- a. The Canadian Environmental Protection Act including but not limited to Hydrocarbon Storage and Halocarbon Regulations.
- b. The Fisheries Act including Metal and Diamond Mining Regulations.
- c. The Migratory Birds Act and the Species at Risk Act.

Transport Canada regulate and enforce aspects of the Diavik mine under the Navigable Waters Act. NRCan regulate and enforce aspects of the Diavik mine under the Explosives Act.

The first column in the table below lists each of EMAB's mandates as outlined in section 4.2 of the EA. The second column provides a narrative statement of EMAB's performance against those mandates, and existing duplicative or alternate coverage for each mandate in today's co-management context. **The mandates that EMAB has consistently executed are in bold.**

EMAB's Mandate under the EA	Execution of EMAB's Mandate & Current Duplicative Regulatory (or Alternate) Coverage
<i>The Advisory Board shall operate at arm's length and independent from the Parties, and shall perform its functions consistently with the purposes and guiding principles in Article I.</i>	EMAB has consistently operated at arm's length and independent of the Parties. Today, Indigenous Parties have more capacity and more resources than they did when EMAB was established to participate directly in regulatory processes. This is a result of settled land claims and land claim negotiations, the Northern

<i>The mandate of the Advisory Board shall be, in respect to the Project, to:</i>	Participant Funding Program ²⁵ , and increased access to resources through signed benefit agreements with industry and government.
a) <i>provide an integrated approach to achieving the purposes in Article 1;</i>	Of the 16 points from the <i>Purpose and Guiding Principles</i> under <i>Article 1</i> of the EA, DDMI is only aware of two that EMAB has consistently focused on in exercising its mandate: d) to respect and protect air, land, water, aquatic resources, wildlife, archaeological and cultural resources, and the land-based economy that are essential to the way of life and well-being of the Aboriginal Peoples; and f) to provide advice and direction to DDMI [..] . DDMI maintains that each of the purposes outlined in Article 1 are achieved through the integrated co-management system today.
b) <i>assist the Parties to implement a co-operative approach to achieving the purposes and implementing the guiding principles in Article 1;</i>	In DDMI's view, evidence of EMAB working collaboratively with the Parties, as opposed to independently, is limited. The coordination and implementation of the TK Panel and TK Monitoring programs are clear examples of multi-party and co-operative opportunities aligned with EMAB's mandate. However, EMAB has had limited success in assisting the Parties with implementing these Programs as discussed under (h). DDMI maintains that each of the purposes and guiding principles outlined in Article 1 are achieved through the integrated co-management system today.
c) <i>to serve as a public watchdog of the regulatory process and the implementation of this Agreement;</i>	EMAB has consistently exercised this mandate and DDMI commends EMAB for their contributions in this space. However, the co-management regime that exists in the NWT today is very different than what was in place when EMAB was created. The creation of the <i>Mackenzie Valley Resource Management Act</i> , and the WLWB through modern-day treaty negotiations and the devolution of federal jurisdictions to the GNWT all occurred <u>after</u> EMAB was created. The co-management system today in the NWT is transparent, highly participatory, inclusive of the Indigenous Parties who are signatories of the EA and not in need of a public watchdog. Indigenous Parties are now front and center in Public Hearings and have demonstrated capabilities to directly intervene without assistance from EMAB. EMAB's role as an intervener in the regulatory process is also duplicative of the roles and responsibilities bestowed on the WLWB, the GNWT, and the Federal Government ²⁶ . It is DDMI's understanding that new mines in the NWT would not require a public-watch dog today and that this is not considered a requirement in the <i>Mineral Resources Act</i> or the ongoing MRA regulation discussions.
d) <i>review Environmental Plans and Programs, Annual Reports, Environmental Protection Measures,</i>	EMAB has consistently exercised these mandates and DDMI commends EMAB for their contributions in this space. However, going into closure, EMAB has not made a clear case for what their role in closure would be beyond continuing to review and make recommendations on plans, programs and reports. As our closure plans

²⁵ [Northern Participant Funding Program](#)

²⁶ See Table 4 in Attachment B for a list of responsible regulators for each aspect of DDMI's closure.

<p>compliance or monitoring reports and other reports and data bearing on Environmental Quality that are produced by any of the Parties or regulatory authorities pursuant to this Agreement, Regulatory Instruments and laws of general application;</p> <p>e) In respect of a matter reviewed pursuant to (d), make recommendations for the achievement of the purposes and guiding principles in Article 1, to DDMI, the Minister and any other Party or body having regulatory or management responsibility for the matter;</p>	<p>are approved and we move into the closure phase, the remaining work for EMAB to contribute to (given that they were not successful in taking on TK Monitoring) is predominantly the review of monitoring reporting which is regulated under the Water Licence. DDMI does not believe it is reasonable to continue to fund a watchdog organization for matters regulated by the WLWB, the GNWT, and Canada through the transparent and inclusive integrated co-management system. However, DDMI recognizes that the review of plans, reports, and applications through the WLWB process, and making recommendations to the WLWB based on technical knowledge, is a critical part of the co-management regulatory process. The need for independent technical reviews may remain through closure even though the volume of items for review will diminish. DDMI proposes this could be achieved either by:</p> <p>a) DDMI providing funding for independent technical panels as part of the WLWB review process (as is already being done for the Processed Kimberlite Facility and Processed Kimberlite to Mine Working Project through the Diavik Geotechnical Review Board and the Independent Review Panel), and/or</p> <p>b) DDMI providing additional funding for independent scientific monitoring or technical reviews through the Traditional Knowledge Monitoring Program, and/or</p> <p>c) Direct capacity funding agreements (where warranted) with Indigenous Parties.</p> <p>DDMI is continuing to have these discussions directly with Indigenous Parties.</p>
<p>f) <i>Make recommendations on issue related to access for purposes of wildlife harvesting;</i></p> <p>g) <i>Make recommendations respecting the participation of each of the Aboriginal Peoples and Affected Communities in training initiatives and monitoring programs bearing on Environmental Quality;</i></p>	<p>DDMI is not aware of how EMAB has met these aspects of its mandate. However, DDMI has Participation Agreements and long-standing relationships with each of the Indigenous Parties to the EA that provide a structure for direct engagement. We have worked directly with Indigenous Parties on issues related to road access to the site and wildlife harvesting, training initiatives, and monitoring programs for instance. Both the Participation Agreements, and the Socio-economic Monitoring Agreement²⁷ have specific commitments around training that DDMI has implemented over the life of the mine. DDMI has completed or is actively negotiating Closure Agreements with each of the Indigenous Parties that also enshrines bi-lateral engagement through closure. DDMI is also working directly with the Indigenous Parties to develop a TK Monitoring Program for closure that will allow communities to evaluate DDMI's closure performance for themselves.</p>
<p>h) make recommendations concerning the need for and design of traditional knowledge and other studies, and, where appropriate, facilitate and management and implementation of</p>	<p>While EMAB consistently makes recommendations regarding TK Monitoring, it has had very limited success in facilitating, managing, or implementing TK studies or monitoring work throughout DDMI's lifespan. The initial TK monitoring work at DDMI started with fish palatability studies in 2002/2003. This evolved into annual community-based monitoring (CBM) work. EMAB facilitated this work briefly from 2005-2007. In 2008, DDMI initiated an engagement process directly with the Indigenous Parties to integrate the CBM into its Aquatic</p>

²⁷ [2015-02-09 gnwt consolidated sema final.pdf](#)

<p><i>these studies;</i></p>	<p>Effects Monitoring Program (AEMP). EMAB established a TK Panel in 2012 to guide how TK should be integrated into the AEMP. EMAB facilitated the program for just one year; by 2013 DDMI took over the coordination and support for both the TK Panel and the TK AEMP camp as Indigenous Parties expressed a preference to engage directly with DDMI rather than indirectly through EMAB. These programs were implemented by DDMI through an independent consultant working directly with the Indigenous Parties and funded by DDMI. DDMI continued to coordinate and support the TK Panel until 2022, and the TK AEMP camp until 2024. Despite EMAB's lack of success in implementing these programs during operations, DDMI approached EMAB in 2021 about developing and implementing a TK Monitoring Program for closure. EMAB turned down this request, stating it felt that its role was to be a watch-dog of DDMI and not work collaboratively with DDMI and the Indigenous Parties on TK Monitoring.²⁸ As outlined in the Background section above, DDMI approached EMAB again in 2024, this time at the behest of the Indigenous Parties via the TK Working Group, to ask if EMAB would consider taking on the development of the TK Monitoring program on behalf of the Indigenous Parties. EMAB and DDMI were unable to come to an agreement on a Terms of Reference for this work ultimately because EMAB would not accept any limits on budget or scope as part of the development process. In 2025, DDMI made the decision to proceed with the development and implementation of the TK Monitoring program for closure through engagement directly with the Indigenous Parties and with the support of independent consultants.</p>
<p><i>j) Facilitate programs to provide information to Affected Communities and the general public on matter bearing on Environmental Quality;</i></p>	<p>Other than producing an annual report, DDMI is not aware of any programs EMAB has recently facilitated to achieve this mandate. EMAB has not held a community-based information session since 2018²⁹ and continues to say that is due to Covid and budget restrictions. EMAB is provided annual funding for Community Engagement but regularly diverts these funds to other tasks³⁰. By contrast, DDMI held over 17 virtual and in-person bi-lateral and multi-party engagements on the FCRP alone since 2019. Additionally, the WLWB held two public workshops (independent of procedural engagements) in 2024 on DDMI's FCRP and Water Licence amendments. During closure, DDMI anticipates that the TK Monitoring Program will be the key mechanism for communicating with Indigenous Parties about the health of the environment, in addition to direct, bi-lateral engagement with each of the Parties as outlined in DDMI's agreements.</p>
<p><i>j) report to the Parties and the public on the Advisory Board's activities and the</i></p>	<p>If EMAB is wound down, there is no need for them to report to the Parties and the public on their activities. As demonstrated by this Table, the only mandates that EMAB has consistently executed are predominantly limited</p>

²⁸ [minutes_june_1-321.pdf](#)

²⁹ [Community Updates | EMAB](#)

³⁰ See breakdown in Attachment C of EMAB's lack of spend on supporting and involving communities as per its audited financial statements from 2019-2024.

achievement of its mandate;	to participating in regulatory processes and providing technical reviews. The remaining aspects of EMAB's mandate under the EA is covered by the responsible regulators within the integrated co-management regulatory system, bi-lateral and multi-party agreements, and DDMI's Water Licence requirements.
k) provide an accessible and public repository of environmental data, studies, and reports relevant to the Advisory Board's mandate;	The WLWB maintains a public registry that serves as a repository for all reports, studies, and environmental data that is relevant to the regulation of DDMI through the Water Licence. DDMI recognizes that there may be some gaps in the WLWB public registry for reports, studies, and data that were produced prior to the establishment of the WLWB. To this end, DDMI has offered to review and digitize EMAB's library to ensure there are no gaps in the historical information.
l) participate as an intervenor, as appropriate for the achievement of its mandate, in regulatory processes, the dispute resolution process under this Agreement and other legal processes; and	EMAB consistently participates as an intervenor in the WLWB's public review processes. DDMI also notes that the responsible regulatory authorities (GNWT, DFO, ECCC) also participate directly in the review of applications by commenting directly in the Online Review System (ORS) and participating in the WLWB processes. The WLWB staff also question DDMI directly through the ORS as part of exercising their own responsibilities. EMAB's role as an intervenor in regulatory processes is duplicative of mandates and responsibilities of each of the actual regulatory authorities (WLWB, GNWT, DFO, ECCC) also participating in these processes. As demonstrated in Part 2 of this Attachment, Indigenous Parties have more capacity now than they did when the EA was signed and participate in the WLWB processes directly.
m) Provide a meaningful role for each of the Aboriginal Peoples in the review and implementation of environmental monitoring plans in respect of the Project.	EMAB is clear that they do not represent the Parties, and Indigenous Parties are also clear that EMAB does not represent them. DDMI understands that some Indigenous Parties do, at times, rely on EMAB where they do not have the capacity, or it's not their priority, to participate in regulatory reviews related to DDMI. Most Indigenous Parties also provide their own recommendations directly to the WLWB in their review of DDMI's plans, applications, or reporting. At times, some Indigenous Parties share EMAB's positions, and some do not. DDMI receives capacity funding requests directly from Indigenous Parties who want to do their own reviews, which reflects that Indigenous Parties see value in establishing their own positions independent of EMAB's. DDMI also notes that Indigenous Parties now have more capacity and more resources than they did when EMAB was established to participate directly in regulatory processes. This is a result of settled land claims and land claim negotiations, the Northern Participant Funding Program ³¹ , and increased access to resources through signed benefit agreements with industry and government.

Table 1 – Regulatory duplication of EMAB's mandate under the EA

³¹ [Northern Participant Funding Program](#)

Part 2: EMAB's Participation in WLWB's Processes

DDMI endeavors to meet directly with Intervenor to address any questions or concerns in advance of regulatory submissions, comment deadlines, technical reviews and public hearings. In DDMI's experience, EMAB chooses to not engage constructively with DDMI in the same way that the Parties do. These offers to engage directly with EMAB, particularly, DDMI's offers to EMAB's consultants to visit the mine site to improve their understanding of a particular DDMI plan or proposal, are rarely accepted.

Using the FCRP V1 review as an example, EMAB submitted 336 comments and recommendations. DDMI suggested in its response that this exceptional number of recommendations is a direct result of EMAB's unwillingness to meaningfully engage with DDMI as part of these reviews. DDMI estimated as many as 50% of EMAB's recommendations on the FCRP V1 were identical re-submissions of previous comments and recommendations from separate review processes. In almost all cases, these resubmissions demonstrate no consideration of the previously provided DDMI responses. It is unclear to DDMI if EMAB reviews DDMI responses with the intent of improving their understanding of DDMI's plans or if their watchdog approach ends with the submission of a technical comments on any given review. DDMI appreciates and supports EMAB's role in obtaining independent expert reviews for the benefit of all Parties and the WLWB, but DDMI expects the high frequency of duplicated comments also makes DDMI and the WLWB's job unnecessarily difficult.³²

In its Reasons for Decision on Version 1 of the FCRP³³, the WLWB expressed disappointment in DDMI and EMAB's working relationship, stating "[t]he lack of an effective working relationship between DDMI and EMAB and the inability to provide focused recommendations is contributing to unnecessary effort from the Board's staff and often adds more time to the public review process" (p.12). The WLWB went on to direct DDMI³⁴ to "report on efforts to improve ongoing communication and engagement challenges with EMAB as part of the 2025 Annual Report required by Part B, Condition 5 of the Water Licence."

DDMI took this decision very seriously and implemented a plan to improve its working relationship with EMAB, including:

- Ongoing offers to engage with EMAB consultants directly on submissions including the FCRP V1.1 and Water Licence Renewal (little uptake).
- Increased offers for site visits for EMAB members (good uptake).
- Ensuring that DDMI has an active EMAB Board Member (in place).
- Providing EMAB with submissions to the WLWB in advance so that EMAB can start on their review during the WLWB conformity check process. The intent is to provide EMAB more time to engage consultants and share comments back to IGO Parties in advance of deadlines.

In the most recent public hearing on DDMI's Water Licence Renewal, the WLWB directed "EMAB to provide an outline of which recommendations from its Interventions have not in EMAB's view been addressed and to include an explanation for why. For any outstanding recommendations, EMAB to clarify if this is a

³² [Diavik - Final CRP - Version 1 - Reasons for Decision - Jul 19_24.pdf](#) (p.12)

³³ [Diavik - Final CRP - Version 1 - Reasons for Decision - Jul 19_24.pdf](#)

³⁴ See Decision #6

recommendation to the Board or to DDMI.”³⁵ In response, EMAB stated³⁶ that DDMI had only addressed 9 of the 76 recommendations – the rest of the responses EMAB deemed “inadequate” or “non-satisfactory” or that the response lacked new information or was otherwise lacking in some way. These views on the adequacy of DDMI’s responses appear to be unique to EMAB. As highlighted above, DDMI’s working relationship with IGO Parties is more collaborative and constructive.

Based on six³⁷ Online Review System (ORS) documents, the volume of reviewer comments by organization shows that EMAB made significantly more comments than other organizations.

Organization	Total Comments
Environmental Monitoring Advisory Board	321
Wek’èezhii Land and Water Board (WLWB)	122
Yellowknives Dene First Nation (YKDFN)	110
Tłı̨ch̨o Government	95
GNWT-ECC (Environment and Climate Change)	68
North Slave Métis Alliance (NSMA)	35
Denínu Kúę First Nation (DKFN)	15
Environment and Climate Change Canada (ECCC)	14
Fisheries and Oceans Canada (DFO)	9
GNWT-ECC (Fort Smith)	8
Diavik Diamond Mines (2012) Inc.	5

³⁵ See Undertaking #6 Diavik - WL Renewal - Public Hearing - Undertakings - Jun 13 25.pdf

³⁶ EMAB Response to Undertaking # 6 - June 2025 Hearing

³⁷ SWALF Response Reports: new.onlinereviewssystem.ca/review/B1384F4D-13B9-F011-8195-6045BD60EC12; Traditional Knowledge Monitoring Framework Version 1.0 (W2015L2-0001): new.onlinereviewssystem.ca/review/5B5C8278-E2A2-F011-8E62-000D3A0C0B8B; Tier 2 Closure and Post-closure Wildlife Management and Monitoring Plan: new.onlinereviewssystem.ca/review/556E08D4-EB79-F011-B481-000D3A0C5B6E; Final Closure and Reclamation Plan (FCRP) Version 1.1: new.onlinereviewssystem.ca/review/C2DCF485-4566-F011-8DCA-0022483DCAB3; Water Licence Renewal - Draft Licence: new.onlinereviewssystem.ca/review/3D5FA4BF-425C-F011-8F7C-000D3A84979B; Waste Management Plan - Version 7: new.onlinereviewssystem.ca/review/OA9039EE-73FE-EE11-AAF0-6045BD5DA25D

Lutsel K'e Dene First Nation	5
GNWT	1
GNWT-Lands	1
Wek'eezhii Renewable Resources Board	1

Table 2 – Volume of EMAB's comments compared to regulators and Parties on the ORS

EMAB's approach to providing an overwhelming amount of recommendations via the ORS leaves the burden of effort on DDMI, the WLWB, and the Parties to evaluate these recommendations with other factors such as merit, context, practicality, cost and other environmental impacts. EMAB has often delayed regulatory process by regularly requesting extensions to complete reviews. These delays have direct operational and cost impacts on DDMI.

It should also be noted that of the five Indigenous Parties to the EA, four of the five (with the exception of the Kitikmeot Inuit Association) also participated in the ORS with comments in these samples. Indigenous Parties have more capacity and more resources than they did when EMAB was established to participate directly in regulatory processes. This is a result of settled land claims and land claim negotiations, the Northern Participant Funding Program³⁸, signed benefit agreements with industry and government, and increased access to technology in remote communities.

³⁸ Northern Participant Funding Program

Attachment B – DDMI’s Reporting Requirements and Planned Activities Through Closure

After 2026, DDMI’s annual reporting requirements will decrease, and all the remaining plans are anticipated to be finalized through the WLWB’s review of the Final Closure and Reclamation Plan (FCRP) V1.1.³⁹ The following table breaks down the anticipated reporting requirements through closure and the responsible regulator. This is the bulk of the work we expect Parties to be reviewing as we progress through closure. After 2035 there is a sharp reduction in monitoring reporting in the post-closure phase – the remainder of this work is included in Table 4.

Reports	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	Review Significance / Complexity	Responsible Regulator
AEMP Annual Report	x	x	x	x	x	x	x			x	moderate	WLWB
AEMP Closure Design ⁴⁰				x							moderate	WLWB
AEMP Re-eval (every 3 years)	x			x							moderate	WLWB
WMMP	x	x	x	x	x	x				x	low	GNWT
CUC	x										moderate	WLWB
TKMP	x	x	x	x	x	x	x	x	x	x	moderate	WLWB
Engagement Plan	x											WLWB
PKMW Model w/IRP review	x		x								low	WLWB
Annual WL Report	x	x	x	x	x	x	x	x	x	x	low	WLWB
Annual Seepage Report	x	x	x	x	x	x	x	x	x	x	low	WLWB
Dam Inspection Reports	x	x	x	x	x	x	x	x	x	x	low	WLWB

³⁹ Diavik - Final CRP - Version 1.1 - Main Report - 1 of 37 - Jul 18 25.pdf (Attachment B – Change Log)

⁴⁰ Submitted with FCRP in 2025.

EAQMMR	x	x	x	x	x						low	GNWT
EA Report	x	x	x	x	x						low	GNWT
RCR + Security Adjustment	x	TBD	TBD	TBD	x						high	WLWB
Final Closure RCR ⁴¹						x					low	WLWB
PAR Content Requirements			x								moderate	WLWB
PAR + Security Adjustment					x					x	high	WLWB
Sewage Treatment Plan	x										low	WLWB
NI Water Treatment Plant Operations Plan	x										low	WLWB
Waste Management Plan	x										low	WLWB
Water Management Plan	x										low	WLWB
Contingency Plan	x										low	WLWB
SWALF Reports	x	x	x	x	x	x	x	x	x	x	low	WLWB
Pond SES Report	x	x	x								high	WLWB
Pond SES Design Plan	x	x	x								moderate	WLWB
NI Closure Design	x										moderate	WLWB

Table 3 – DDMI's anticipated reporting requirement through closure and the responsible regulator

⁴¹ This is an administrative compilation of all the RCRs.

The following table provides an integrated schedule of DDMI's planned activities for permanent closure.

Phase	Operations & Progressive Reclamation				Closure				Post-Closure																			
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045	2046	2047	2048	2049	
Activity	Closure Year:				0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23
Underground Mining A154S/N																												
Underground Mining A418	complete																											
Open Pit Mining A21																												
Underground Mining A21																												
NCRP Closure																												
SCRCP Development																												
SCRCP Closure																												
Re-Mining for Backfill																												
PK Deposition - PKC	complete																											
PK Deposition - A418																												
PKC Options Evaluations	complete																											
PKC Closure																												
PKC Infrastructure Decommissioning																												
Mine Water Treatment																												
Accommodation/Power/Transportation Required																												
Community & Regulator Engagement																												
Final Closure and Reclamation Plan	complete																											
Closure Engineering Design	complete																											
Decommission Collection Ponds 2, 7																												
Decommission Collection Ponds 1, 13 ^(a)																												
Decommission Collection Ponds 4, 5, Sump E21 ^(a)																												
Decommission Collection Ponds 3, 10, 11, 12 & Pipeline ^(a)																												
Inventory of Assets																												
Commercial Arrangements - Sale/Transfer of Assets																												
Flood Mine Areas (A418)																												
Decommission Mine Area Dikes (A418)																												
Flood Mine Areas (A154 and A21)																												
Decommission Mine Area Dikes (A154 and A21)																												
Decommission Surface Mine Infrastructure																												
Decommission Underground Mine Infrastructure																												
Decommission Process and Paste Plants																												
Decommission Explosives Plant and Storage																												
Decommission Accommodation and Other Buildings																												
Decommission Fuel Storage and Power																												
Decommission Waste Transfer																												
Final NI Sediment Investigation																												
Decommission North Inlet																												
Decommission Water Treatment																												
Decommission Airstrip																												
Cover Landfill																												
Decommission Roads, Plantsite, Laydown																												
Re-vegetation																												
Performance Monitoring ^{(a) (b)}																												
Performance Monitoring - Wildlife ^(a)																												
Effects Monitoring - Aquatics ^(a)																												
Effects Monitoring - Wildlife ^(a)																												
Vegetation and Lichen Monitoring Program																												
Reclamation Completion Reporting																												
Performance Assessment Reporting ^(a)																												

Notes:
 (a) Duration can be adjusted based on outcomes of performance assessment reports
 (b) Scheduled Performance Monitoring passed 2034 is limited to dam inspections and safety review as recommended by the Engineer of Record
 (c) Schedule earlier if supported by progressive reclamation results
 I=interim AEMP; C=comprehensive AEMP
 Schedule is for planning purposes and subject to change.

Table 4 – DDMI's integrated closure schedule

Attachment C – Breakdown of EMAB’s Expenditures

Part 1: Expenditures on technical reviews vs. overhead

DDMI is of the opinion that the funds used by EMAB to conduct technical reviews could be spent in a more “fiscally prudent, reasonable, and cost-effective manner” (as per the requirements of 4.8 (c) of the EA).

The following table outlines EMAB’s spend through the 2023 and 2024 fiscal years⁴².

	2024 Budget	2024 actual	2023 actual
Administration	\$ 70,905.00	\$ 68,391.00	\$ 72,930.00
Management	\$ 213,810.00	\$ 213,684.00	\$ 216,471.00
Governance	\$ 130,915.00	\$ 116,982.00	\$ 124,140.00
Oversight and Monitoring	\$ 170,077.00	\$ 101,678.00	\$ 211,822.00
Involving and Supporting Communities	\$ 26,530.00	\$ -	\$ -
Communications	\$ 10,700.00	\$ 8,721.00	\$ 8,233.00
Total	\$ 622,937.00	\$ 509,456.00	\$ 633,596.00

Table 5 EMAB’s spend for 2023 and 2024 fiscal years

EMABs focus on retaining external consultants to conduct technical reviews comes at a very high overhead cost. For the fiscal years ending in 2023 and 2024, EMAB spent an average of \$406,299 on staff, rent, Board honoraria and travel to produce an average of \$165,227 in technical reviews and communications products. Put another way, EMAB spent an average of just over 70% of its budget on management, administration, and governance to produce the technical reviews and communications products that account for the remaining 28% of the average spend. So out of the total amount of funding DDMI provides to EMAB, Indigenous Parties only see benefits from about one-third of that monetary spend, excluding the Board honoraria payments that go directly to the representatives appointed by each Indigenous Party.

In DDMI’s view, third-party independent reviews, where necessary, could be completed in a much more cost-effective manner. This could be achieved either by

- DDMI providing funding for independent technical panels as part of the WLWB review process (as is already being done for the Processed Kimberlite Facility and Processed Kimberlite to Mine Working Project through the Diavik Geotechnical Review Board and the Independent Review Panel); and/or
- DDMI providing additional funding for independent scientific monitoring or technical reviews through the Traditional Knowledge Monitoring Program.

DDMI is discussing these options directly with Indigenous Parties as part of our engagement on a wind-down proposal for EMAB.

Part 2: Expenditures on Involving and Supporting Communities

Despite having budgeted for community engagement in 2023-2024 (as outlined in the previous section), EMAB has not held community-based engagements since 2018⁴³ and continues to refer to Covid and budget restrictions. By contrast, DDMI held over 17 virtual and in-person bi-lateral and multi-party engagements on the FCRP alone since 2019. Additionally, the WLWB held two public workshops (independent of procedural engagements) in 2024 on DDMI’s FCRP and Water Licence amendments.

⁴² Audited financial statements are available at www.emab.ca

⁴³ [Community Updates | EMAB](#)

EMAB is provided annual funding for Community Engagement but regularly diverts these funds to other tasks. The following excerpts of EMAB's audited financial statements from its annual reports clearly shows that beyond engagement with its individual Board members from each Indigenous Party, EMAB has not engaged, involved, or supported communities fulsomely since 2018.

SCHEDULE OF INVOLVING AND SUPPORTING COMMUNITIES		Schedule 5	
	2019	2019 Actual	2018 Actual
Kitikmeot Inuit Association	\$ 6,100	\$ -	\$ -
Lutsel K'e	3,800	2,623	5,271
North Slave Metis Alliance	1,700	-	1,686
T'licho Government	2,900	-	1,167
Yellowknives Dene First Nation	2,300	-	-
Board member consultation honorarium	5,100	-	562
	\$ 21,900	\$ 2,623	\$ 8,686

Figure 1 – EMAB's expenditures on involving and supporting communities in 2018/2019.⁴⁴

SCHEDULE OF INVOLVING AND SUPPORTING COMMUNITIES		Schedule 5	
	2020	2020 Actual	2019 Actual
Board member consultation honoraria	\$ 3,000	\$ 391	\$ -
Kitikmeot Inuit Association	6,200	-	-
Lutsel K'e	5,600	-	2,623
North Slave Metis Alliance	1,800	-	-
T'licho Government	3,000	-	-
Yellowknives Dene First Nation	2,300	-	-
Board member consultation honorarium	2,200	-	-
	\$ 24,100	\$ 391	\$ 2,623

Figure 2 – EMAB's expenditures on involving and supporting communities in 2019/2020.⁴⁵

SCHEDULE OF INVOLVING AND SUPPORTING COMMUNITIES		Schedule 5	
	2021 Budget	2021 Actual	2020 Actual
Board member consultation honoraria	\$ 3,000	\$ 406	\$ 391
Kitikmeot Inuit Association	6,300	-	-
Lutsel K'e	5,700	-	-
North Slave Metis Alliance	1,850	-	-
T'licho Government	3,100	-	-
Yellowknives Dene First Nation	2,400	-	-
Board member consultation honorarium	2,300	-	-
	\$ 24,650	\$ 406	\$ 391

⁴⁴ 147608_emab_annual_report_2018-19.pdf

⁴⁵ 149986_emab_annual_report_2019-20_text_1.pdf

Figure 3 – EMAB’s expenditures on involving and supporting communities in 2020/2021.⁴⁶

SCHEDULE OF INVOLVING AND SUPPORTING COMMUNITIES		Schedule 5		
	2022 Budget	2022 Actual	2021 Actual	
Board member consultation honoraria	\$ 2,450	\$ -	\$ 406	
Kitikmeot Inuit Association	6,450	-	-	
Lutsel K'e	5,800	-	-	
North Slave Metis Alliance	1,900	-	-	
T'licho Government	3,200	-	-	
Yellowknives Dene First Nation	2,450	-	-	
	\$ 22,250	\$ -	\$ 406	

Figure 4 – EMAB’s expenditures on involving and supporting communities in 2021/2022.⁴⁷

SCHEDULE OF INVOLVING AND SUPPORTING COMMUNITIES		Schedule 5		
	2023 Budget	2023 Actual	2022 Actual	
Board member consultation honoraria	\$ 4,900	\$ -	\$ -	
Kitikmeot Inuit Association	6,550	-	-	
Lutsel K'e	5,950	-	-	
North Slave Metis Alliance	1,925	-	-	
T'licho Government	3,300	-	-	
Yellowknives Dene First Nation	2,500	-	-	
	\$ 25,125	\$ -	\$ -	

Figure 5 – EMAB’s expenditures on involving and supporting communities in 2022/2023.⁴⁸

SCHEDULE OF INVOLVING AND SUPPORTING COMMUNITIES		Schedule 5		
	2024 Budget	2024 Actual	2023 Actual	
Board member consultation honoraria	\$ 3,340	\$ -	\$ -	
KIA	6,750	-	-	
Lutsel Ke	6,075	-	-	
NSMA	1,990	-	-	
T'licho	3,350	-	-	
YKDFN	2,565	-	-	
Staff attend an annual assembly	2,460	-	-	
	\$ 26,530	\$ -	\$ -	

Figure 6 - EMAB's expenditures on involving and supporting communities in 2023/2024.⁴⁹

This lack of community-spend from 2019-2024 is demonstrative of EMAB not prioritising involving and supporting communities despite that being two of four core recommendations coming out of the *Future*

⁴⁶ [emab annual report 2020-21.pdf](#)

⁴⁷ [154417_2021_22_emab_annual_report_final.pdf](#)

⁴⁸ [emab annual report 22-23_finalized.pdf](#)

⁴⁹ [emab annual report 2023-2024-web.pdf](#)

of EMAB report in 2023 (see Attachment D and E). EMAB's Annual General Meetings are intended to be the forum for Indigenous Party connection, though there is limited involvement from the Parties year-over-year. The Future of EMAB workshop was attended by EMAB Board members, not representatives of Parties. Both EMAB and Indigenous Parties are clear that EMAB does not represent the Parties. It is unclear to DDMI how EMAB can claim to provide a "direct connection" or "voice"⁵⁰ for Indigenous communities given the lack of evidence above that EMAB, or individual Board members, are engaging with or informing their respective Parties of EMAB's activities.

⁵⁰ See *Rationale for EMAB to continue through full and final closure*. Distributed by EMAB to the Parties via email on January 7, 2026.

Attachment D – DDMI’s Engagement on EMAB’s Future

DDMI sent a request to the Minister in 2022 to initiate the discussion on winding down EMAB. The Minister directed DDMI to first engage with the Indigenous Parties before proposing a wind-down schedule for the Minister to consider.

DDMI called a meeting of the Parties to the Environmental Agreement (EA) in 2022. An EA Working group was established to seek interest in potential for amendments to the EA, discuss the future of EMAB, and align on an approach for closure TK monitoring.

The group met four times between 2023 – 2024 with key positive outcomes:

1. The future of EMAB discussions directing EMAB to complete a related workshop and final report.
2. The establishment a TK Monitoring Working Group which advanced collaborative development of the TK monitoring program for Diavik’s Closure.

A decision was made not to start a detailed review of the EA for the purpose of amendment as Indigenous Parties stated they would need up to a \$1M in capacity funding to advance this. Fundamental disagreements around accepting devolution also remained for some Indigenous Parties, which would have further complicated the EA amendment process.

A Future of EMAB workshop and report was produced by EMAB itself in 2023 that resulted in the following recommendations:

1. EMAB should continue [through closure] on a mutually agreed schedule.
2. EMAB should focus on improving engagement and two-way communication with affected communities.
3. EMAB should seek out more opportunities to be proactive in convening or assisting the Parties to find cooperative approaches.
4. EMAB should support work by the Parties to jointly establish a TK Monitoring Plan for closure, and if this process does not produce a viable Plan, consider re-establishing its own TK/IQ Panel.

DDMI is unclear of what work EMAB has progressed on these recommendations. EMAB has not yet submitted a proposal for a wind-down schedule to DDMI, nor a plan to fulfill recommendations 2 and 3 above.

On recommendation 4, in January 2024, the TK Working Group recommended that EMAB be approached to potentially lead the development of TK Monitoring Program (EMAB had previously rejected DDMI’s request to take on the development of the TK Monitoring Program in 2021).⁵¹ EMAB submitted an initial proposal to Diavik on August 1, 2024. After multiple rounds of revisions between DDMI and EMAB, and discussions at the Board level, EMAB submitted a Terms of Reference that DDMI was unable to accept due to lack of constraints around scope and budget. Due to the regulatory deadline of September 2025 for submitting the TK Monitoring plan, DDMI decided to lead the plan development in-house, effectively ending conversations regarding the plan development or implementation under EMAB.

⁵¹ [minutes_june_1-321.pdf](#)

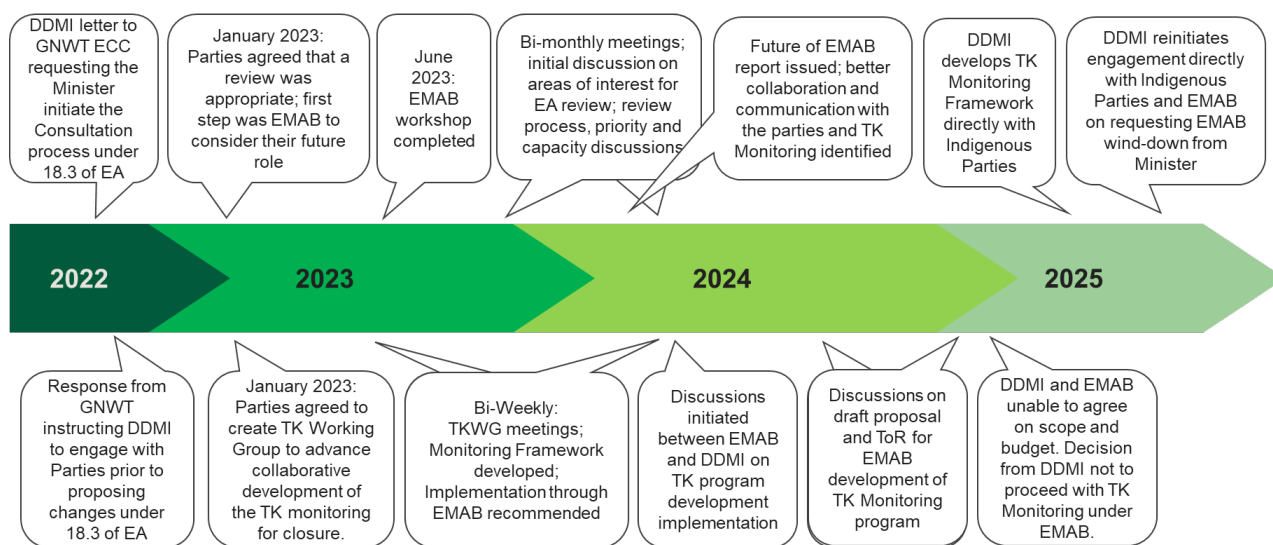


Figure 7 – Timeline of engagements regarding the future of EMAB

On November 25, 2025, DDMI re-initiated direct engagement with the Parties to the EA on proposing a wind-down schedule for EMAB as per section 18.3(b) of the EA via a letter to each of the Parties to the EA. DDMI posed the following questions in these letters:

1. What concerns (if any) does your Party have with EMAB being wound down?
2. Does your Party see any gaps in the existing regulatory oversight during closure beyond what is already provided by the WLWB, GNWT, ECCC, and the DFO?

On December 10, 2025, DDMI informed EMAB of its intentions to submit a wind-down proposal to the Minister following engagement with the Parties. DDMI met with the following Parties to the Environmental Agreement to discuss the contents of the November 25, 2025, letter and hear feedback on EMAB's wind-down.

- GNWT-ECC staff, December 12, 2025
- Yellowknives Dene First Nation staff, December 15, 2025
- Tlicho Government staff, December 15, 2025
- GNWT-ECC Deputy Minister and Assistant Deputy Minister and staff, December 16, 2025
- North Slave Metis Alliance staff, December 17, 2025
- CIRNAC staff, December 22, 2025
- Lutsel K'e Dene First Nation staff, January 5, 2026

The initial feedback from Indigenous Parties during these engagements included:

- General sentiment that EMAB's contributions through independent technical reviews are useful, although the extent to which this sentiment is felt varies between Parties.
- Some Parties expressed that EMAB provides oversight by way of participating in regulatory processes that communities either don't have the capacity to do, or where it's not a priority.
- Other Parties acknowledged that they have more capacity to participate directly in the regulatory process now and therefore aren't reliant on EMAB.
- Other Parties acknowledged that they have more confidence in the ability of other Parties who participate in the regulatory process than EMAB. Also acknowledged that it's the GNWT and WLWB's jobs to regulate DDMI.
- Some Indigenous Parties may wait until the Minister's consultation process to express their final views on DDMI's wind-down proposal.
- All of the Indigenous Parties we engaged with requested to see a draft or more detail regarding DDMI's wind-down proposal prior to DDMI submitting it to the Minister.

In response to these requests, DDMI circulated a confidential draft of its wind-down proposal for EMAB to the Indigenous Parties on January 8, 2026.

DDMI requested follow-up meetings with each of the Indigenous Parties prior to finalizing the draft proposal to be sent to the Minister. Meetings were held with the following Parties:

- North Slave Metis Alliance staff, January 12, 2026. Staff advised that the NSMA President, who is also the EMAB Board member for NSMA, had provided a letter of support for EMAB to continue through closure.
- Yellowknives Dene First Nation staff, January 20, 2026. Staff advised they want to further discuss capacity funding options with DDMI if EMAB were to be wound down. Advised that they will present their position directly to the Minister.

DDMI followed up with the Tlicho Government, LKDFN, and KIA staff as well on the draft proposal. Staff from each group advised that they a) would not have time to meet again and/or b) would not have official direction from their leadership on the draft proposal for EMAB's wind-down prior to DDMI submitting it to the Minister. DDMI is committed to continuing bi-lateral engagement with each Indigenous Party on EMAB's wind-down and expects that Indigenous Parties will also inform the Minister of their positions directly.

Formal correspondence between DDMI, the GNWT, as well as the Indigenous Parties specific to EMAB's wind-down is included below.

Deputy Minister Erin Kelly
Department of Environment and Natural Resources
Government of the Northwest Territories

August 26, 2022

Dear Dr. Kelly,

RE: Diavik Environmental Agreement – Article 18.3

As I am sure you are aware, Diavik Diamond Mine (2012) Inc. (DDMI) is approaching the cessation of commercial production. Planning for closure has been ongoing since the original mine design and Comprehensive Study Report (1998) (CSR) and detailed closure execution planning is now nearing completion. These include not only the engineering and environmental monitoring and management plans for the mine site closure, but also plans to mitigate impacts on our employees, communities and northern businesses. In addition to budgeting and planning to meet regulatory requirements, DDMI also holds several agreements, including the Environmental Agreement, that will change with a transition from operations to closure.

Article 18.3 of the Environmental Agreement addresses how changes to the Environmental Agreement may be undertaken once commercial operations have ceased:

- 18.3 Once DDMI has ceased Commercial Production at the Project, the Minister may, in his/her discretion, and following Consultation with the Parties and the Advisory Board, do either or both of the following:
- (a) relieve DDMI of its responsibilities and obligations arising from this Agreement to the extent deemed by the Minister to be reasonable in the circumstances; and
 - (b) set a schedule for winding down and concluding the operation of the Advisory Board.

The Environmental Agreement is a complex agreement amongst eight Parties, each with a potentially different view of what changes might be appropriate following the cessation of commercial production. Article 18.3 references “Consultation with the Parties and the Advisory Board” prior to the Minister making any decisions regarding changes to the Agreement and/or the operation of the Advisory Board. We expect this Consultation will be both involved and require an extended time period.

By this letter, DDMI is requesting that the “Minister” initiate a Consultation process as per Article 18.3 of the Environmental Agreement.

RioTinto

I thank you for consideration of our request. DDMI looks forward to constructive engagement with the Parties and the Advisory Board through this consultation process.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'G. Macdonald', with a horizontal line underneath.

Gord Macdonald
Manager, Closure

Cc: Parties to the Environmental Agreement
EMAB Members
John McCullum, Executive Director, EMAB



September 14, 2022

Gord MacDonald
Manager, Closure
Diavik Diamond Mines (2012) Inc.
PO BOX 2498
SUITE 300, 5201-50TH AVENUE
YELLOWKNIFE NT X1A 2P8
Via email: gord.macdonald@riotinto.com

Dear Mr. MacDonald:

Diavik Environmental Agreement – Article 18.3

Thank you for your August 26, 2022, letter requesting the Minister of Environment and Natural Resources (ENR) initiate consultation with Parties to the Diavik Environmental Agreement (the Agreement) under Article 18.3 of the Agreement. For reference, Article 18.3 states:

Once Diavik Diamond Mines (2012) Ltd. (DDMI) has ceased Commercial Production at the Project, the Minister may, in his/her discretion, and following Consultation with the Parties and the Advisory Board, do either or both of the following:

(a) relieve DDMI of its responsibilities and obligations arising from this Agreement to the extent deemed by the Minister to be reasonable in the circumstances; and

(b) set a schedule for winding down and concluding the operation of the Advisory Board.

As noted in your letter, the Agreement is a complex legal document among eight Parties, with potentially different views of what and when reductions to the Agreement are appropriate following cessation of commercial production. For example, the Government of the Northwest Territories (GNWT) is aware that in 2019, and again in 2022, the Environmental Monitoring Advisory Board (Advisory Board) has sought out the views of the Parties regarding support for continuing the Advisory Board's role after commercial production has ended. The North Slave Métis Alliance, Kitikmeot Inuit Association, Government of Canada, and ENR on behalf of the GNWT, have stated their support at the time for the continued operation of the Advisory Board through closure while other Parties have not responded. It is understood that the Advisory Board shall continue to manage and conduct its affairs in a fiscally prudent, reasonable, and cost-effective manner as outlined in Article 4.8 c) of the Agreement until a wind down schedule for the Advisory Board is agreed upon by the Parties.

.../2

A specific proposal for changes contemplated under Article 18.3 from DDMI or any other Party would be a starting point for collaborative ENR-led consultation. Prior to ENR initiating formal consultation, DDMI, or any other party with a proposal, should meaningfully engage with Parties. Any proposal received by ENR should outline how Parties were engaged and how the proposal aligns with the Final Closure and Reclamation Plan that DDMI will submit to the Wek'èezhì Land and Water Board.

Thank you for proactively raising this issue, as commercial production at Diavik Diamond Mine is expected to cease in 2025 and it is expected that consultation under Article 18.3 of the Agreement will be involved and require extended discussions.

I look forward to receiving a specific proposal for the consideration of all Parties.

Sincerely,



Erin Kelly, Ph.D.
Deputy Minister
Environment and Natural Resources

c. Distribution List

Grand Chief Jackson Lafferty
Tłı̨chǫ Government

Chief Edward Sangris and Council
Yellowknives Dene First Nation
(Dettah)

Chief Fred Sangris and Council
Yellowknives Dene First Nation (Ndilo)

Acting Chief Charlie Catholique and
Council / EMAB Chair
Łutsel K'e Dene First Nation

Vice-President Marc Whitford
North Slave Métis Alliance

President Stanley Anablak
Kitikmeot Inuit Association

Shaleen Woodward
Principal Secretary
Government of the Northwest
Territories

Martin Goldney
Secretary to Cabinet/Deputy Minister
Executive and Indigenous Affairs

Shawn McCann
Deputy Secretary, Indigenous and
Intergovernmental Affairs
Executive and Indigenous Affairs

Jack Kaniak
EMAB Vice-Chair
Kitikmeot Inuit Association

Violet Camsell-Blondin
EMAB Secretary Treasurer
Tłı̨chǫ Government

Matthew Spence
Regional Director General
Crown-Indigenous Relations and
Northern Affairs Canada

Ryan Miller
EMAB Board Member
Yellowknives Dene First Nation

Dr. Ngeta Kabiri
EMAB Board Member
Government of the Northwest
Territories

John McCullum
Executive Director
Environmental Monitoring Advisory
Board

Mohannad Elsalhy
Environmental Specialist
Environmental Monitoring Advisory
Board

Johanne Black
EMAB Alternate Board Member
Yellowknives Dene First Nation

Doris Enzoe
EMAB Alternate Board Member
Lutsel K'e Dene First Nation

Joline Huskey
EMAB Alternate Board Member
Tłı̨chǫ Government

Adrian D'Hont
EMAB Alternate Board Member
North Slave Métis Alliance

Willie Aglukkaq
EMAB Alternate Board Member
Kitikmeot Inuit Association

Sean Sinclair
EMAB Alternate Board Member
Diavik Diamond Mines (2012) Inc.

Michael Roesch
EMAB Alternate Board Member
Government of Canada

Laurie McGregor
EMAB Alternate Board Member
Government of the Northwest
Territories

Andrew Applejohn
A/Director, Environmental
Stewardship and Climate Change
Environment and Natural Resources

Fred Pedersen
A/Executive Director
Kitikmeot Inuit Association

Andre Larabie
Senior Administrative Officer
Łutsel K'e Dene First Nation

Lena Black
Acting Chief Executive Officer
Yellowknives Dene First Nation

Annie Boucher
Executive Director
Akaitcho Territory Government

Laura Duncan
Tłıchǵ Executive Officer
Tłıchǵ Government

Debra Young
Administrative Assistant
North Slave Métis Alliance

Ernest Betsina
Chief, Yellowknives Dene First Nation
Chief Drygeese Bldg.
Dettah, NT
X1A 3N6

Fred Sangris
Chief, Yellowknives Dene First Nation
901 Sikyea Tili, 2nd Fl. Deton Cho Bldg.
N'dilo, NT
X1A 1Z1

25 November 2025

Subject: EMAB wind down during closure

Dear Chief Betsina and Chief Sangris,

I trust this letter finds you both well.

I am writing to advise you that Diavik Diamond Mines (2012) Inc. (DDMI) is considering submitting a proposal to the Minister of Environment and Climate Change, the Honourable Jay Macdonald (the Minister), requesting that a wind-down schedule be set for the Environmental Monitoring Advisory Board (EMAB) as per section 18.3(b) of the Environmental Agreement (EA), which states:

18.3 Once DDMI has ceased Commercial Production at the Project, the Minister may, in his/her discretion, and following Consultation with the Parties and the Advisory Board, do either or both of the following:

(a) relieve DDMI of its responsibilities and obligations arising from this Agreement to the extent deemed by the Minister to be reasonable in the circumstances; and

(b) set a schedule for winding down and concluding the operation of the Advisory Board.

Under the current mine plan, DDMI will cease commercial production in **March 2026**. As such, we are seeking final input from the Indigenous Party signatories to the EA prior to proposing the Minister to set a wind-down schedule for EMAB as described in section 18.3(b) of the EA.

As the mine transitions into its final closure phase, the overall environmental risk profile is significantly reduced, and the closure plan is largely finalized and approved. We want to ensure that any wind-down proposal reflects the Yellowknives Dene First Nation's (YKDFN) views during this transition.

We are interested to hear your perspective on:

- Any considerations you would like to discuss if EMAB were to wind down its activities?
- Any specific areas you feel may still require specialized oversight (beyond that provided by the Wek'èezhì Land and Water Board (WLWB), the Government of Northwest Territories (GNWT), Environment and Climate Change Canada (ECCC) and Fisheries and Oceans Canada (DFO)) during the closure phase?

For additional context on the engagement DDMI has conducted with the Indigenous Parties to the EA regarding the future of EMAB to date, please refer to the Background section appended to the end of this letter.

As YKDFN is signatory to the EA, we would like to meet with you or your designate to discuss at your earliest convenience. We look forward to hearing your perspectives and continuing the dialogue that we started in 2022. Amanda Annand (amanda.annand@riotinto.com) will follow up with your staff to find a meeting time that suits.

Respectfully,



Matthew Breen
Chief Operating Officer
Rio Tinto Diavik Diamond Mines Inc.

CC:

Gord Stephenson, General Manager, Closure, DDMI
Sean Sinclair, Manager, Closure, DDMI – EA Party Representative
Tara Marchiori, Manager, Communities & Social Performance, DDMI – EMAB member

Amanda Annand, Senior Advisor, Communities & Social Performance, DDMI

Adi Adiele, EMAB Board Member, YKDFN

Ryan Miller, YKDFN Representative, DDMI TK Working Group

Background on engagement regarding EMAB's future

DDMI first initiated discussions on the future of EMAB with the Indigenous Parties to the EA, including YKDFN, in 2022. This followed direction from the GNWT Deputy Minister of Environment and Natural Resources at the time (now Environment and Climate Change) that DDMI should engage with the Parties prior to submitting a proposal to GNWT for a wind-down schedule.

An EA Working Group was established in 2022 to:

- Explore potential amendments to the EA
- Discuss EMAB's future
- Align on an approach for Traditional Knowledge (TK) Monitoring during closure

The EA Working Group met four times between 2023 and 2024, resulting in:

1. Direction for EMAB to complete a *Future of EMAB* workshop and final report
2. Creation of the TK Monitoring Working Group (TKWG) to advance collaborative development of a TK program for Diavik closure
3. A decision not to proceed with a detailed review and amendment of the EA at that time

The TKWG (with staff from each Indigenous Party and DDMI) met 12 times between 2023 and 2024 and collaboratively drafted a TK Monitoring Framework. However, consensus was not reached on the ratio of TK monitors from each group, and the framework was never ratified.

The EMAB Board members completed a *Future of EMAB* workshop and report (2023) which recommended:

1. Continuing EMAB through closure on a mutually agreed schedule
2. Improving engagement and two-way communication with affected communities
3. Seeking opportunities to foster cooperative approaches among Parties
4. Supporting development of a TK Monitoring Plan for closure, or re-establishing its own Traditional Knowledge/Inuit Qaujimagatunqangit Panel if consensus was not achieved

In January 2024, the TKWG recommended that EMAB be approached to lead development of the TK Monitoring Program, given its governance structure and mandate under the EA. EMAB submitted an initial proposal to DDMI in August 2024, followed by a revised Terms of Reference (ToR) in January 2025. Despite multiple rounds of revisions and lengthy discussions at the Board level over the outstanding issues of ratios, budget, and timeframe, the ToR submitted by EMAB did not include a budget estimate or cost

management plan, and did not fundamentally resolve the ratio dispute between the Indigenous Parties.

Given the pressing timeline for the plan to be submitted to the WLWB by September 2025 and the absence of critical financial elements, Diavik was unable to accept the revised ToR from EMAB and undertook development of the TKMP plan.

EMAB continues to focus on its role as an environmental watchdog—a role that is now duplicative given the robust co-management regulatory regime established since EMAB's inception. DDMI recognizes that, under the current regulatory framework, proponents of new mines are not required to establish independent environmental oversight bodies. This reflects the evolution of a robust co-management regime in the Mackenzie Valley, developed through the Mackenzie Valley Resource Management Act (MVRMA) and modern land claim agreements such as the Tłı̄ch̄ Agreement, which created the WLWB.

When EMAB was established, the Northwest Territories had not yet undergone Devolution, and institutions like the WLWB did not exist. At that time, regulatory gaps were potentially significant, including in wildlife and environmental legislation. Since then, these gaps have been addressed through new laws, such as the Wildlife Act, and through the creation of inclusive, transparent co-management boards that provide independent oversight.

DDMI values the important role EMAB has played throughout the life of the mine—particularly in its early years when these processes and legislative frameworks were still emerging. Today, oversight is embedded within a comprehensive co-management system that ensures accountability, Indigenous participation, and environmental stewardship. DDMI remains committed to working within this system and continuing open, transparent engagement directly with communities and regulators as we move through closure.

Jackson Lafferty
Grand Chief
Tłı̄chǫ Government
127 Donda Tili #127
Behchokò, NT
X0E 0B9

25 November 2025

Subject: EMAB wind down during closure

Dear Grand Chief Lafferty,

I trust this letter finds you well.

I am writing to advise you that Diavik Diamond Mines (2012) Inc. (DDMI) is considering submitting a proposal to the Minister of Environment and Climate Change, the Honourable Jay Macdonald (the Minister), requesting that a wind-down schedule be set for the Environmental Monitoring Advisory Board (EMAB) as per section 18.3(b) of the Environmental Agreement (EA), which states:

18.3 Once DDMI has ceased Commercial Production at the Project, the Minister may, in his/her discretion, and following Consultation with the Parties and the Advisory Board, do either or both of the following:

(a) relieve DDMI of its responsibilities and obligations arising from this Agreement to the extent deemed by the Minister to be reasonable in the circumstances; and

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Under the current mine plan, DDMI will cease commercial production in **March 2026**. As such, we are seeking final input from the Indigenous Party signatories to the EA prior to proposing the Minister to set a wind-down schedule for EMAB as described in section 18.3(b) of the EA.

As the mine transitions into its final closure phase, the overall environmental risk profile is significantly reduced, and the closure plan is largely finalized and approved. We want to ensure that any wind-down proposal reflects the Tłıchq Government's views during this transition.

We are interested to hear your perspective on:

- Any considerations you would like to discuss if EMAB were to wind down its activities?
- Any specific areas you feel may still require specialized oversight (beyond that provided by the Wek'èezhìı Land and Water Board (WLWB), the Government of Northwest Territories (GNWT), Environment and Climate Change Canada (ECCC) and Fisheries and Oceans Canada (DFO)) during the closure phase?

For additional context on the engagement DDMI has conducted with the Indigenous Parties to the EA regarding the future of EMAB to date, please refer to the Background section appended to the end of this letter.

As the Tłıchq Government is signatory to the EA, we would like to meet with you or your designate to discuss at your earliest convenience. We look forward to hearing your perspectives and continuing the dialogue that we started in 2022. Amanda Annand (amanda.annand@riotinto.com) will follow up with your staff to find a meeting time that suits.

Respectfully,



Matthew Breen
Chief Operating Officer
Rio Tinto Diavik Diamond Mines Inc.

CC:

Gord Stephenson, General Manager, Closure, DDMI
Sean Sinclair, Manager, Closure, DDMI – EA Party Representative
Tara Marchiori, Manager, Communities & Social Performance, DDMI
Amanda Annand, Senior Advisor, Communities & Social Performance
Violet Camsell-Blondin, EMAB Board Member, Tłıchq Government
Brett Wheeler, Tłıchq Government Representative, DDMI TK Working Group

Background on engagement regarding EMAB's future

DDMI first initiated discussions on the future of EMAB with the Indigenous Parties to the EA, including the Tłıchǵ Government, in 2022. This followed direction from the GNWT Deputy Minister of Environment and Natural Resources (now Environment and Climate Change) that DDMI should engage with the Parties prior to submitting a proposal to GNWT for a wind-down schedule.

An EA Working Group was established in 2022 to:

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When EMAB was established, the Northwest Territories had not yet undergone Devolution, and institutions like the WLWB did not exist. At that time, regulatory gaps were potentially significant, including in wildlife and environmental legislation. Since then, these gaps have been addressed through new laws, such as the Wildlife Act, and through the creation of inclusive, transparent co-management boards that provide independent oversight.

DDMI values the important role EMAB has played throughout the life of the mine—particularly in its early years when these processes and legislative frameworks were still emerging. Today, oversight is embedded within a comprehensive co-management system that ensures accountability, Indigenous participation, and environmental stewardship. DDMI remains committed to working within this system and continuing open, transparent engagement directly with communities and regulators as we move through closure.

Charlie Catholique, Chair
Environmental Monitoring Agency Board (EMAB)
PO Box 2577
Yellowknife, NT
X1A 2P9

25 November 2025

Subject: DDMI engaging with the Parties on wind-down for EMAB

Dear Mr. Catholique,

I trust this letter finds you well. I am writing to inform you that Diavik Diamond Mines (2012) Inc. (DDMI) is considering submitting a proposal to the Minister of Environment and Climate Change, the Honourable Jay Macdonald (the Minister), requesting that a wind-down schedule be set for the Environmental Monitoring Advisory Board (EMAB) as per section 18.3(b) of the Environmental Agreement (EA), which states:

18.3 Once DDMI has ceased Commercial Production at the Project, the Minister may, in his/her discretion, and following Consultation with the Parties and the Advisory Board, do either or both of the following:

(a) relieve DDMI of its responsibilities and obligations arising from this Agreement to the extent deemed by the Minister to be reasonable in the circumstances; and

(b) set a schedule for winding down and concluding the operation of the Advisory Board.

Under the current mine plan, DDMI will cease commercial production in **March 2026**. As such, we are seeking final input from the signatories to the EA prior to proposing the Minister to set a wind-down schedule for EMAB as described in section 18.3(b) of the EA.

DDMI remains committed to working collaboratively with all Parties to ensure any wind-down schedule for EMAB respects the intent of the EA. We will continue to keep EMAB informed of the outcomes of these discussions.

Respectfully,



Matthew Breen
Chief Operating Officer
Rio Tinto Diavik Diamond Mines Inc.

CC:

Gord Stephenson, General Manager, Closure, DDMI
Sean Sinclair, Manager, Closure, DDMI – EA Party Representative
Tara Marchiori, Manager, Communities & Social Performance, DDMI
Amanda Annand, Senior Advisor, Communities & Social Performance
John McCullum, Executive Director, EMAB
Baba Pederson, EMAB Board Member, Kitikmeot Inuit Association
Marc Whitford, EMAB Board Member, North Slave Metis Alliance
Adi Adiele, EMAB Board Member, Yellowknives Dene First Nation
Violet Camsell-Blondin, EMAB Board Member, Tłıchǫ Government
Sarah Elsasser, EMAB Board Member, GNWT

Background on engagement regarding EMAB's future

DDMI first initiated discussions on the future of EMAB with the Indigenous Parties to the EA in 2022. This followed direction from the GNWT Deputy Minister of Environment and Natural Resources (now Environment and Climate Change) that DDMI should engage with the Parties prior to submitting a proposal to GNWT for a wind-down schedule.

An EA Working Group was established in 2022 to:

- Explore potential amendments to the EA
- Discuss EMAB's future
- Align on an approach for Traditional Knowledge (TK) Monitoring during closure

The EA Working Group met four times between 2023 and 2024, resulting in:

1. Direction for EMAB to complete a *Future of EMAB* workshop and final report
2. Creation of the TK Monitoring Working Group (TKWG) to advance collaborative development of a TK program for Diavik closure
3. A decision not to proceed with a detailed review and amendment of the EA at that time

The TKWG (with staff from each Indigenous Party and DDMI) met 12 times between 2023 and 2024 and collaboratively drafted a TK Monitoring Framework. However, consensus was not reached on the ratio of TK monitors from each group, and the framework was never ratified.

The EMAB Board members completed a *Future of EMAB* workshop and report (2023) which recommended:

1. Continuing EMAB through closure on a mutually agreed schedule
2. Improving engagement and two-way communication with affected communities
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In January 2024, the TKWG recommended that EMAB be approached to lead development of the TK Monitoring Program, given its governance structure and mandate under the EA. EMAB submitted an initial proposal to DDMI in August 2024, followed by a revised Terms of Reference (ToR) in January 2025. Despite multiple rounds of revisions and lengthy discussions at the Board level over the outstanding issues of ratios, budget, and timeframe, the ToR submitted by EMAB did not include a budget estimate or cost

management plan and did not fundamentally resolve the ratio dispute between the Indigenous Parties.

Given the pressing timeline for the plan to be submitted to the WLWB by September 2025 and the absence of critical financial elements, Diavik was unable to accept the revised ToR from EMAB and undertook development of the TKMP plan.

EMAB continues to focus on its role as an environmental watchdog—a role that is now duplicative given the robust co-management regulatory regime established since EMAB's inception. DDMI recognizes that, under the current regulatory framework, proponents of new mines are not required to establish independent environmental oversight bodies. This reflects the evolution of a robust co-management regime in the Mackenzie Valley, developed through the Mackenzie Valley Resource Management Act (MVRMA) and modern land claim agreements such as the Tłı̄ch̄ Agreement, which created the WLWB.

When EMAB was established, the Northwest Territories had not yet undergone Devolution, and institutions like the WLWB did not exist. At that time, regulatory gaps were potentially significant, including in wildlife and environmental legislation. Since then, these gaps have been addressed through new laws, such as the Wildlife Act, and through the creation of inclusive, transparent co-management boards that provide independent oversight.

DDMI values the important role EMAB has played throughout the life of the mine—particularly in its early years when these processes and legislative frameworks were still emerging. Today, oversight is embedded within a comprehensive co-management system that ensures accountability, Indigenous participation, and environmental stewardship. DDMI remains committed to working within this system and continuing open, transparent engagement directly with communities and regulators as we move through closure.

Robert Jenkins
Deputy Minister of Environment and Climate Change
Government of the Northwest Territories
600, 5102-50th Ave
Yellowknife, NT X1A 2L9

25 November 2025

Subject: EMAB wind down during closure

Dear Mr. Jenkins,

I trust this letter finds you well.

I am writing to advise you that Diavik Diamond Mines (2012) Inc. (DDMI) is considering submitting a proposal to the Minister of Environment and Climate Change, the Honourable Jay Macdonald (the Minister), requesting that a wind-down schedule be set for the Environmental Monitoring Advisory Board (EMAB) as per section 18.3(b) of the Environmental Agreement (EA), which states:

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(b) set a schedule for winding down and concluding the operation of the Advisory Board.

Under the current mine plan, DDMI will cease commercial production in **March 2026**. As such, we are seeking final input from the signatories to the EA prior to proposing the Minister to set a wind-down schedule for EMAB as described in section 18.3(b) of the EA.

As the mine transitions into its final closure phase, the overall environmental risk profile is significantly reduced, and the closure plan is largely finalized and approved. We want to ensure that any wind-down proposal reflects the GNWT's views during this transition.

We are interested to hear your perspective on:

- Any considerations you would like to discuss if EMAB were to wind down its activities?
- Any specific areas you feel may still require specialized oversight (beyond that provided by the Wek'èezhìi Land and Water Board (WLWB), the Government of Northwest Territories (GNWT), Environment and Climate Change Canada (ECCC) and Fisheries and Oceans Canada (DFO)) during the closure phase?

For additional context on the engagement DDMI has conducted with the Indigenous Parties to the EA regarding the future of EMAB to date, please refer to the Background section appended to the end of this letter.

As the GNWT is signatory to the EA, we would like to meet with you or your designate to discuss at your earliest convenience. We look forward to hearing your perspective and continuing the dialogue that we started in 2022. Amanda Annand (amanda.annand@riotinto.com) will follow up with your staff to find a meeting time that suits.

Respectfully,



Matthew Breen
Chief Operating Officer
Rio Tinto Diavik Diamond Mines Inc.

CC:

Gord Stephenson, General Manager, Closure, DDMI
Sean Sinclair, Manager, Closure, DDMI – EA Party Representative
Tara Marchiori, Manager, CSP, DDMI – EMAB Board Member, DDMI
Laura Worsley-Brown, Manager, Communications and Government Relations, DDMI
Amanda Annand, Senior Advisor, Communities & Social Performance
Nathen Richea, ADM Regulatory, Assessment, and Authorizations, GNWT-ECC
Rick Walbourne, Director, Regulatory and Permitting, GNWT-ECC
Nathalie Oldfield, Manager, Environmental Impact Assessment, GNWT-ECC
Sarah Elsasser, EMAB Board Member, GNWT

Background on engagement regarding EMAB's future

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management plan, and did not fundamentally resolve the ratio dispute between the Indigenous Parties.

Given the pressing timeline for the plan to be submitted to the WLWB by September 2025 and the absence of critical financial elements, Diavik was unable to accept the revised ToR from EMAB and undertook development of the TKMP plan.

EMAB continues to focus on its role as an environmental watchdog—a role that is now duplicative given the robust co-management regulatory regime established since EMAB's inception. DDMI recognizes that, under the current regulatory framework, proponents of new mines are not required to establish independent environmental oversight bodies. This reflects the evolution of a robust co-management regime in the Mackenzie Valley, developed through the Mackenzie Valley Resource Management Act (MVRMA) and modern land claim agreements such as the Tłı̄chǫ Agreement, which created the WLWB.

When EMAB was established, the Northwest Territories had not yet undergone Devolution, and institutions like the WLWB did not exist. At that time, regulatory gaps were potentially significant, including in wildlife and environmental legislation. Since then, these gaps have been addressed through new laws, such as the Wildlife Act, and through the creation of inclusive, transparent co-management boards that provide independent oversight.

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James Marlowe
Chief, Łutsel K'e Dene First Nation
Łutsel K'e Dene First Nation Band Office
Łutsel K'e, NT X0E 1A0

25 November 2025

Subject: EMAB wind down during closure

Dear Chief Marlowe,

I trust this letter finds you well.

I am writing to advise you that Diavik Diamond Mines (2012) Inc. (DDMI) is considering submitting a proposal to the Minister of Environment and Climate Change, the Honourable Jay Macdonald (the Minister), requesting that a wind-down schedule be set for the Environmental Monitoring Advisory Board (EMAB) as per section 18.3(b) of the Environmental Agreement (EA), which states:

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Under the current mine plan, DDMI will cease commercial production in **March 2026**. As such, we are seeking final input from the Indigenous Party signatories to the EA prior to proposing the Minister to set a wind-down schedule for EMAB as described in section 18.3(b) of the EA.

As the mine transitions into its final closure phase, the overall environmental risk profile is significantly reduced, and the closure plan is largely finalized and approved. We want

to ensure that any wind-down proposal reflects the Łutsel K'e Dene First Nation's (LKDFN) views during this transition.

We are interested to hear your perspective on:

- Any considerations you would like to discuss if EMAB were to wind down its activities?
- Any specific areas you feel may still require specialized oversight (beyond that provided by the Wek'èezhì Land and Water Board (WLWB), the Government of Northwest Territories (GNWT), Environment and Climate Change Canada (ECCC) and Fisheries and Oceans Canada (DFO)) during the closure phase?

For additional context on the engagement DDMI has conducted with the Indigenous Parties to the EA regarding the future of EMAB to date, please refer to the Background section appended to the end of this letter.

As LKDFN is signatory to the EA, we would like to meet with you or your designate to discuss at your earliest convenience. We look forward to hearing your perspectives and continuing the dialogue that we started in 2022. Amanda Annand (amanda.annand@riotinto.com) will follow up with your staff to find a meeting time that suits.

Respectfully,



Matthew Breen
Chief Operating Officer
Rio Tinto Diavik Diamond Mines Inc.

CC:

Gord Stephenson, General Manager, Closure, DDMI
Sean Sinclair, Manager, Closure, DDMI – EA Party Representative
Tara Marchiori, Manager, Communities & Social Performance, DDMI
Amanda Annand, Senior Advisor, Communities & Social Performance, DDMI
Charlie Catholique, EMAB Chair, Łutsel K'e Dene First Nation
Florence Catholique, EA Party Representative, Łutsel K'e Dene First Nation
Eileen Marlowe, Wildlife Manager, Łutsel K'e Dene First Nation

Background on engagement regarding EMAB's future

DDMI first initiated discussions on the future of EMAB with the Indigenous Parties to the EA, including LKDFN, in 2022. This followed direction from the GNWT Deputy Minister of Environment and Natural Resources (now Environment and Climate Change) that DDMI should engage with the Parties prior to submitting a proposal to GNWT for a wind-down schedule.

An EA Working Group was established in 2022 to:

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In January 2024, the TKWG recommended that EMAB be approached to lead development of the TK Monitoring Program, given its governance structure and mandate under the EA. EMAB submitted an initial proposal to DDMI in August 2024, followed by a revised Terms of Reference (ToR) in January 2025. Despite multiple rounds of revisions and lengthy discussions at the Board level over the outstanding issues of ratios, budget, and timeframe, the ToR submitted by EMAB did not include a budget estimate or cost

management plan, and did not fundamentally resolve the ratio dispute between the Indigenous Parties.

Given the pressing timeline for the plan to be submitted to the WLWB by September 2025 and the absence of critical financial elements, Diavik was unable to accept the revised ToR from EMAB and undertook development of the TKMP plan.

EMAB continues to focus on its role as an environmental watchdog—a role that is now duplicative given the robust co-management regulatory regime established since EMAB's inception. DDMI recognizes that, under the current regulatory framework, proponents of new mines are not required to establish independent environmental oversight bodies. This reflects the evolution of a robust co-management regime in the Mackenzie Valley, developed through the Mackenzie Valley Resource Management Act (MVRMA) and modern land claim agreements such as the Tłı̄ch̄ Agreement, which created the WLWB.

When EMAB was established, the Northwest Territories had not yet undergone Devolution, and institutions like the WLWB did not exist. At that time, regulatory gaps were potentially significant, including in wildlife and environmental legislation. Since then, these gaps have been addressed through new laws, such as the Wildlife Act, and through the creation of inclusive, transparent co-management boards that provide independent oversight.

DDMI values the important role EMAB has played throughout the life of the mine—particularly in its early years when these processes and legislative frameworks were still emerging. Today, oversight is embedded within a comprehensive co-management system that ensures accountability, Indigenous participation, and environmental stewardship. DDMI remains committed to working within this system and continuing open, transparent engagement directly with communities and regulators as we move through closure.

James Eetoolook
President
Kitikmeot Inuit Association
30 Mitik Street
Cambridge Bay, NU
X0B 0C0

25 November 2025

Subject: EMAB wind down during closure

Dear President Eetoolook,

I trust this letter finds you well.

I am writing to advise you that Diavik Diamond Mines (2012) Inc. (DDMI) is considering submitting a proposal to the Minister of Environment and Climate Change, the Honourable Jay Macdonald (the Minister), requesting that a wind-down schedule be set for the Environmental Monitoring Advisory Board (EMAB) as per section 18.3(b) of the Environmental Agreement (EA), which states:

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Under the current mine plan, DDMI will cease commercial production in **March 2026**. As such, we are seeking final input from the Indigenous Party signatories to the EA prior to proposing the Minister to set a wind-down schedule for EMAB as described in section 18.3(b) of the EA.

As the mine transitions into its final closure phase, the overall environmental risk profile is significantly reduced, and the closure plan is largely finalized and approved. We want to ensure that any wind-down proposal reflects the Kitikmeot Inuit Association's (KIA) views during this transition.

We are interested to hear your perspective on:

- Any considerations you would like to discuss if EMAB were to wind down its activities?
- Any specific areas you feel may still require specialized oversight (beyond that provided by the Wek'èezhì Land and Water Board (WLWB), the Government of Northwest Territories (GNWT), Environment and Climate Change Canada (ECCC) and Fisheries and Oceans Canada (DFO)) during the closure phase?

For additional context on the engagement DDMI has conducted with the Indigenous Parties to the EA regarding the future of EMAB to date, please refer to the Background section appended to the end of this letter.

As KIA is signatory to the EA, we would like to meet with you or your designate to discuss at your earliest convenience. We look forward to hearing your perspectives and continuing the dialogue that we started in 2022. Amanda Annand (amanda.annand@riotinto.com) will follow up with your staff to find a meeting time that suits.

Respectfully,



Matthew Breen
Chief Operating Officer
Rio Tinto Diavik Diamond Mines Inc.

CC:

Gord Stephenson, General Manager, Closure, DDMI
Sean Sinclair, Manager, Closure, DDMI – EA Party Representative
Tara Marchiori, Manager, Communities & Social Performance, DDMI
Amanda Annand, Senior Advisor, Communities & Social Performance, DDMI
Baba Pederson, EMAB Board Member, KIA
Katrina Hatogina, KIA representative – DDMI TK Working Group

Background on engagement regarding EMAB's future

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When EMAB was established, the Northwest Territories had not yet undergone Devolution, and institutions like the WLWB did not exist. At that time, regulatory gaps were potentially significant, including in wildlife and environmental legislation. Since then, these gaps have been addressed through new laws, such as the Wildlife Act, and through the creation of inclusive, transparent co-management boards that provide independent oversight.

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Ron Pankratz
Regional Director General
Crown-Indigenous Relations and Northern Affairs Canada
Government of Canada
4923 52nd Street
Yellowknife, NT X1A 2R3

25 November 2025

Subject: EMAB wind down during closure

Dear Mr. Pankratz,

I trust this letter finds you well.

I am writing to advise you that Diavik Diamond Mines (2012) Inc. (DDMI) is considering submitting a proposal to the Minister of Environment and Climate Change, the Honourable Jay Macdonald (the Minister), requesting that a wind-down schedule be set for the Environmental Monitoring Advisory Board (EMAB) as per section 18.3(b) of the Environmental Agreement (EA), which states:

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Respectfully,



Matthew Breen
Chief Operating Officer
Rio Tinto Diavik Diamond Mines Inc.

CC:

Gord Stephenson, General Manager, Closure, DDMI
Sean Sinclair, Manager, Closure, DDMI – EA Party Representative
Tara Marchiori, Manager, CSP, DDMI – EMAB Board Member
Laura Worsley-Brown, Manager, Communications and Government Relations, DDMI
Amanda Annand, Senior Advisor, Communities & Social Performance
Alternate EMAB Board Member, Government of Canada, Michael Roesch

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Marc Whitford
President
North Slave Metis Alliance
32 Melville Drive
Yellowknife, NT X1A 0G2

25 November 2025

Subject: EMAB wind down during closure

Dear Mr. Whitford,

I trust this letter finds you well.

I am writing to advise you that Diavik Diamond Mines (2012) Inc. (DDMI) is considering submitting a proposal to the Minister of Environment and Climate Change, the Honourable Jay Macdonald (the Minister), requesting that a wind-down schedule be set for the Environmental Monitoring Advisory Board (EMAB) as per section 18.3(b) of the Environmental Agreement (EA), which states:

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(b) set a schedule for winding down and concluding the operation of the Advisory Board.

Under the current mine plan, DDMI will cease commercial production in **March 2026**. As such, we are seeking final input from the Indigenous Party signatories to the EA prior to proposing the Minister to set a wind-down schedule for EMAB as described in section 18.3(b) of the EA.

As the mine transitions into its final closure phase, the overall environmental risk profile is significantly reduced, and the closure plan is largely finalized and approved. We want to ensure that any wind-down proposal reflects the North Slave Metis Alliance's (NSMA) views during this transition.

We are interested to hear your perspective on:

- Any considerations you would like to discuss if EMAB were to wind down its activities?
- Any specific areas you feel may still require specialized oversight (beyond that provided by the Wek'èezhì Land and Water Board (WLWB), the Government of Northwest Territories (GNWT), Environment and Climate Change Canada (ECCC) and Fisheries and Oceans Canada (DFO)) during the closure phase?

For additional context on the engagement DDMI has conducted with the Indigenous Parties to the EA regarding the future of EMAB to date, please refer to the Background section appended to the end of this letter.

As NSMA is signatory to the EA, we would like to meet with you or your designate to discuss at your earliest convenience. We look forward to hearing your perspectives and continuing the dialogue that we started in 2022. Amanda Annand (amanda.annand@riotinto.com) will follow up with your staff to find a meeting time that suits.

Respectfully,



Matthew Breen
Chief Operating Officer
Rio Tinto Diavik Diamond Mines Inc.

CC:

Gord Stephenson, General Manager, Closure, DDMI
Sean Sinclair, Manager, Closure, DDMI – EA Party Representative
Tara Marchiori, Manager, Communities & Social Performance, DDMI – EMAB Member
Amanda Annand, Senior Advisor, Communities & Social Performance, DDMI
Orna Phelan, NSMA representative for the DDMI TK Working Group

Background on engagement regarding EMAB's future

DDMI first initiated discussions on the future of EMAB with the Indigenous Parties to the EA, including NSMA, in 2022. This followed direction from the GNWT Deputy Minister of Environment and Natural Resources at the time (now Environment and Climate Change) that DDMI should engage with the Parties prior to submitting a proposal to GNWT for a wind-down schedule.

An EA Working Group was established in 2022 to:

- Explore potential amendments to the EA
- Discuss EMAB's future
- Align on an approach for Traditional Knowledge (TK) Monitoring during closure

The EA Working Group met four times between 2023 and 2024, resulting in:

1. Direction for EMAB to complete a *Future of EMAB* workshop and final report
2. Creation of the TK Monitoring Working Group (TKWG) to advance collaborative development of a TK program for Diavik closure
3. A decision not to proceed with a detailed review and amendment of the EA at that time

The TKWG (with staff from each Indigenous Party and DDMI) met 12 times between 2023 and 2024 and collaboratively drafted a TK Monitoring Framework. However, consensus was not reached on the ratio of TK monitors from each group, and the framework was never ratified.

The EMAB Board members completed a *Future of EMAB* workshop and report (2023) which recommended:

1. Continuing EMAB through closure on a mutually agreed schedule
2. Improving engagement and two-way communication with affected communities
3. Seeking opportunities to foster cooperative approaches among Parties
4. Supporting development of a TK Monitoring Plan for closure, or re-establishing its own Traditional Knowledge/Inuit Qaujimaqatuqangit Panel if consensus was not achieved

In January 2024, the TKWG recommended that EMAB be approached to lead development of the TK Monitoring Program, given its governance structure and mandate under the EA. EMAB submitted an initial proposal to DDMI in August 2024, followed by a revised Terms of Reference (ToR) in January 2025. Despite multiple rounds of revisions and lengthy discussions at the Board level over the outstanding issues of ratios, budget, and timeframe, the ToR submitted by EMAB did not include a budget estimate or cost

management plan, and did not fundamentally resolve the ratio dispute between the Indigenous Parties.

Given the pressing timeline for the plan to be submitted to the WLWB by September 2025 and the absence of critical financial elements, Diavik was unable to accept the revised ToR from EMAB and undertook development of the TKMP plan.

EMAB continues to focus on its role as an environmental watchdog—a role that is now duplicative given the robust co-management regulatory regime established since EMAB's inception. DDMI recognizes that, under the current regulatory framework, proponents of new mines are not required to establish independent environmental oversight bodies. This reflects the evolution of a robust co-management regime in the Mackenzie Valley, developed through the Mackenzie Valley Resource Management Act (MVRMA) and modern land claim agreements such as the Tłı̄ch̄ Agreement, which created the WLWB.

When EMAB was established, the Northwest Territories had not yet undergone Devolution, and institutions like the WLWB did not exist. At that time, regulatory gaps were potentially significant, including in wildlife and environmental legislation. Since then, these gaps have been addressed through new laws, such as the Wildlife Act, and through the creation of inclusive, transparent co-management boards that provide independent oversight.

DDMI values the important role EMAB has played throughout the life of the mine—particularly in its early years when these processes and legislative frameworks were still emerging. Today, oversight is embedded within a comprehensive co-management system that ensures accountability, Indigenous participation, and environmental stewardship. DDMI remains committed to working within this system and continuing open, transparent engagement directly with communities and regulators as we move through closure.



North Slave Métis Alliance

32 Melville Dr, Yellowknife, NT X1A 2P7

January 8, 2026

Email: emab1@northwestel.net

Charles (Charlie) Catholique

Chair, Environmental Monitoring Advisory Board (EMAB)

P.O. Box 1364

Yellowknife, NT,

X1A 2P1

Dear Chair Catholique

Re: Request for Confirmation of North Slave Métis Alliance Support for the Continuation of the Environmental Monitoring Advisory Board Until Full and Final Closure of the Diavik Mine

This letter is to confirm the North Slave Métis Alliance's (NSMA's) support for the Environmental Agreement for the Diavik Diamond Mine (EA) and particularly the Environmental Monitoring Advisory Board (EMAB) to continue operating until full and final closure of the Diavik Mine, and to affirm the support we gave for EMAB to continue in our letter of September 14, 2020.

EMAB performs a vital role in environmental monitoring at Diavik, and ensuring that the land and water is protected, including for the cultural use of NSMA members and other Indigenous communities who use the area. EMAB is also important to provide a voice for the Aboriginal Parties to the EA in regulatory mechanisms that manage Diavik.

If you need any additional information please contact us.

Sincerely

Marc Whitford

Attachment E - Future Role of EMAB report

Future Role of EMAB



Results of a Workshop with the Environmental Monitoring Advisory Board (EMAB)

June 27-28, 2023,
Yellowknife

Report prepared by
Shauna Morgan

August 11, 2023

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Executive Summary

On June 27 and 28, 2023, over 1.5 days, the Environmental Monitoring Advisory Board (EMAB) met to discuss the future of EMAB, as Diavik nears the end of its commercial production phase.

The Board reflected on EMAB's strengths and its key challenges, including areas of tension and uncertainty. EMAB is particularly valued for its thorough and informed technical reviews and interventions in the regulatory process. EMAB has also played an important role in holding regulators such as the GNWT accountable.

EMAB's key challenges have included ensuring that either affected community members at large or community leaders are fully informed about key Project-related decisions, particularly in the context of budget constraints and pandemic restrictions. There have been disagreements about the extent to which EMAB should be more proactive, for example, in convening meetings or workshops that bring together all the Parties, or initiating programs to address concerns raised, as opposed to standing well outside the fray as a watchdog, offering comments and recommendations for others to take action on. Both roles are within EMAB's mandate. EMAB has also struggled with defining its role in effectively supporting TK-based/community monitoring since Diavik took over convening the TK/IQ Panel in 2013.

The following is a summary of recommendations that were supported by all EMAB members¹ at the June 2023 workshop:

1. EMAB should continue based on a mutually-agreed schedule.

The Board believes that EMAB plays an important role and recommends that EMAB should continue to exist throughout Diavik's closure and post-closure phases, until DDMI fulfills its responsibilities under the Environmental Agreement and its license requirements.² The Parties should decide together on an appropriate schedule that adjusts EMAB's level of operations according to DDMI's activities, scheduled monitoring requirements, and the results of performance assessment reports.

2. EMAB should focus on improving engagement and two-way communication with affected communities.

EMAB renews its ongoing commitment to improving information flow between EMAB and affected communities, so that community members and leaders are more informed and engaged with the Diavik project. EMAB should review its

¹ Note: the views represented in this report are not necessarily the views of any of the Parties to the Environmental Agreement that appointed the Board Members – rather they are the views of the individual Board members.

² Note: one Board member did not support the part of the recommendation that reads “until DDMI fulfills its responsibilities under the Environmental Agreement and its license requirements.”

current Communications Plan and associated budget to determine whether it is on track to achieve the priority objectives from its Action Plan, and whether allocated resources are adequate.

EMAB could consider whether it is feasible to hold joint information sessions with Diavik in communities, particularly about closure and post-closure, while taking steps to ensure people are aware that EMAB is fully independent of both Diavik and government agencies.

3. EMAB should seek out more opportunities to be proactive in convening or assisting the Parties to find cooperative approaches.

While EMAB must uphold its role as an independent watchdog, it is also mandated to assist the Parties in implementing cooperative approaches to solving problems in ways that align with the guiding principles of the Agreement, and it could be more proactive in seeking out opportunities to do so. For example, EMAB could convene more multi-stakeholder workshops focused on understanding concerns raised by community members, similar to the proposed workshop on fish parasites. Any such workshops or other non-budgeted items would require Diavik to agree to provide additional funding. EMAB could be proactive in convening meetings of the Parties, for example to discuss the future of EMAB, while acknowledging that EMAB is not in a position to direct the Parties. The Board may also be able to support the work of the TK Working Group through logistical support or by facilitating access to EMAB resources and expertise, depending on what assistance the Group requires.

4. EMAB should support work by the Parties to jointly establish a TK Monitoring Plan for closure, and if this process does not produce a viable Plan, consider re-establishing its own TK/IQ Panel.

The Parties to the EA were convened by Diavik in January 2023 and established a TK Working Group to figure out a path forward on a TK Monitoring Plan for closure and post-closure. If this Working Group is able to produce a TK Monitoring Plan, then Diavik would submit it to the Land and Water Board, which would circulate the Plan for comment—EMAB would then solicit input from communities (who could submit feedback to the WLWB separately) and then provide its assessment and suggestions to the WLWB, with the goal of producing the best possible TK-based/community monitoring program.

If the Working Group is not able to come up with a TK Monitoring Plan or a path forward, then EMAB should consider re-establishing its own TK/IQ Panel, as per section 4.9 of the EA, specifically to advise EMAB on an appropriate process for establishing a TK Monitoring Plan (including suggestions for design and implementation) that could be supported by all the affected communities.

Introduction

On June 27 and 28, 2023, over 1.5 days, the Environmental Monitoring Advisory Board (EMAB) met to discuss the future role of EMAB. A list of participants is found in Appendix A. The purpose of the workshop was to:

- Review EMAB's current activities and the expected changes once Diavik stops being an operational mine and transitions into closure;
- Engage together in critical reflection and analysis of the current Action Plan and key priorities, within the context of EMAB's established mandate and objectives;
- Determine as a group what EMAB needs to achieve, preserve, avoid and eliminate based on the most recent five years of operation;
- Identify areas of consensus and any areas of disagreement amongst Board members around the future role of EMAB, including any recommended follow-up actions regarding areas of disagreement; and
- Identify common themes, issues, outcomes and next steps for ensuring EMAB continues to serve an appropriate and vital purpose.

The workshop was held at this time because Diavik expects to reach the end of its commercial production phase by the first quarter of 2026, and the Minister has considerable discretionary power under the Environmental Agreement to set a schedule for winding down EMAB any time after commercial production ends—but only after consultation with the Parties and with EMAB. The Parties met in January 2023 and recommended that EMAB discuss and put forward its own position on the matter. The workshop was an opportunity for the EMAB Board to do so. This report summarizes the Board's recommendations.

This report is structured as follows:

- ❖ Background and context related to EMAB's mandate, the most valued aspects of EMAB, and the process for how EMAB's future will be decided;
- ❖ A review of EMAB's previous strategic goals and five-year action plans, its strengths and challenges, and key tensions and areas of uncertainty;
- ❖ The most important aspects of EMAB's mandate to focus on during closure and post-closure; and
- ❖ Summary of recommendations by EMAB Board members and next steps.

Background and Context

EMAB Purpose and Mandate

The Environmental Monitoring Advisory Board (EMAB) was formed as a requirement of the Environmental Agreement (EA) for the Diavik Diamond Project, which came into effect in 2000. EMAB currently has seven Board members, including representatives from each of the five Aboriginal Parties to the Agreement, the company, and the Government of the Northwest Territories (GNWT) (see Appendix A for list of current Board members). The EA established

eight seats on EMAB—the eighth member being Canada—but following the devolution process, the federal government took steps to withdraw from the EA, instead delegating its authority to the GNWT.³ EMAB operates independently of Diavik, any government agency, or any Indigenous government.

EMAB’s overall role is to help achieve the purposes and guiding principles of the Agreement by providing an integrated approach and by assisting the Parties in implementing a co-operative approach, while serving as an independent public watchdog of the regulatory process and Agreement implementation. The Board has a role in facilitating information sharing amongst Parties to the Agreement, and makes recommendations to the Minister or any Party with regulatory or management responsibility on how the purposes and guiding principles of the Agreement can best be achieved.

EMAB’s role according to the Environment Agreement:

- ❖ EMAB “shall operate at arm’s length and independent from the Parties” (4.2);
- ❖ EMAB shall “assist the Parties to implement a co-operative approach to achieving the purposes and implementing the guiding principles of the Agreement” (4.2b);
- ❖ EMAB shall “serve as a public watchdog of the regulatory process and the implementation of this Agreement” (4.2c); and
- ❖ EMAB shall “provide a meaningful role for each of the Aboriginal Peoples in the review and implementation of environmental monitoring plans” (4.2m).

³ Not all of the other Parties have agreed that the federal government (Canada) should withdraw from either EMAB or the Environmental Agreement. Currently, Canada has appointed an alternate member of EMAB, who does not attend meetings. Canada appointed a regular member to EMAB in February 2020; however, the person resigned in June 2020, and has not yet been replaced.

The following is an overview of key activities that EMAB is mandated to do according to the Environmental Agreement:

Involvement in regulatory and management processes:

- ❖ Review proposed environmental plans and programs as well as reports produced by Diavik or any other Party or regulatory authority (4.2d);
- ❖ Make recommendations to DDMI, the Minister, and any body that has regulatory or management authority (4.2e);
- ❖ Provide an accessible public database of environmental data, studies and reports (4.2k); and
- ❖ Participate as an intervenor in regulatory processes (4.2l).

Support studies and monitoring based on traditional knowledge:

- ❖ Make recommendations on the need for and design of TK studies, and where appropriate, facilitate management and implementation of such studies (4.2h); and
- ❖ EMAB may, from time to time, establish two panels of experts—one to assist in the application and consideration of TK (and one to assist in the application and consideration of other types of scientific knowledge) (4.9b,c,d,e).

Support community involvement in monitoring:

- ❖ Make recommendations on community participation in environmental training and monitoring (4.2g);
- ❖ Provide a meaningful role for Aboriginal Parties in review and implementation of environmental monitoring plans (4.2m); and
- ❖ Work with DDMI to determine how and when monitoring data is shared (7.4a).

Facilitate information sharing:

- ❖ Facilitate programs to provide information to Affected Communities and the general public on matters of environmental quality related to Diavik (4.2i); and
- ❖ Ensure a timely, proactive, and cooperative approach to information sharing amongst Parties, between EMAB/Aboriginal Parties, and between EMAB/Aboriginal community members (14.1a).

The full text of the Environmental Agreement is found in Appendix B.

What Board members value most about EMAB

At the workshop, Board members were asked to reflect on the following questions:

What motivates, inspires and drives you to continue work with EMAB – both personally and on behalf of your organization?

What does EMAB do that no other body can do?

Why do you think it's important that EMAB continues (or not)?

The following responses were offered:

- EMAB is one of the first Boards of its kind established in Canada. This is also the first time a co-management Board like the Wek'èezhii Land and Water Board (WLWB) is overseeing the closure of several major diamond mines. Processes and standards are being figured out for the first time, and it is very important to set good precedents.
- The GNWT is still in the process of developing some of its regulatory requirements – EMAB plays an important role in ensuring this is done well and things are not missed.
- EMAB has been endorsed and supported by all the different Parties; it is remarkable they have come together collectively. This collaboration must continue and the momentum should be sustained and built upon.
- EMAB was created around the same time as the Tłıchq land claim agreement and co-management board was being put in place – EMAB was designed to be a critical piece of the puzzle. EMAB is an important way for affected Indigenous communities and governments to be part of the process all together.
- There is a need for an independent public watchdog because neither industry nor government can be fully trusted to fulfill all of their commitments.
- EMAB is a rare forum where all affected communities, including the Dene, Métis and Inuit, can work together and be fully involved in overseeing and monitoring the Diavik mine.
- Without EMAB, some of the affected communities could easily get left behind or left out, particularly those with less of their own resources and staff capacity to participate independently in regulatory processes.

- EMAB also makes the regulatory process more efficient – instead of each of the affected communities using precious resources to do their own research and intervene independently, EMAB can help streamline and channel these efforts by sharing information.
- Ultimately, if any of the signatory communities were not adequately involved, the consequence for Diavik is that DDMI would not fulfill its Closure Plan and it would not be released from its responsibilities after closure.
- There must be proper oversight on traditional lands. The land and water around Diavik is one of Canada’s last frontiers of wilderness – it has been a pristine environment. The waters and caribou must be protected for use by future generations.
- We have heard that mining companies can do a lot of damage to the Land; “I want to see for myself and represent my people.”
- We want to ensure history does not repeat itself and avoid leaving another abandoned mine site for public governments to clean up, like other places in the NWT and Canada.
- EMAB has dedicated employees, good people working for it; the organization is already set up and should not be dismantled before the work is done.
- EMAB presents great opportunities to collaboratively come up with ideas that could present solutions to challenges with the mine; “I hope we can focus more on collaboration.”

How EMAB’s future will be decided

The Environmental Agreement broadly indicates how EMAB should eventually be dissolved. Section 18.2 states:

*This Agreement shall terminate upon full and final reclamation and abandonment of the Project site, in accordance with the requirements of all Regulatory Instruments and the terms of this Agreement **and completion of any and all post-closure monitoring and maintenance** required in connection with the Project. (emphasis added)*

EMAB would certainly shut down when the Agreement ceases to exist, and this would happen once DDMI has fulfilled all regulatory requirements related to post-closure monitoring and maintenance—but these have not yet been specified as the Final Closure Plan has not been approved. Moreover, it is difficult to predict ahead of time when post-closure requirements will be complete, as it will depend

upon the ongoing results of long-term monitoring (how well the reclamation process is going).

To provide more certainty, the Agreement provides another way that EMAB could be concluded, at any time after commercial production ends. Section 18.3 states:

Once DDMI has ceased Commercial Production at the Project, the Minister may, in his/her discretion, and following Consultation with the Parties and the Advisory Board, do either or both of the following:

- (a) relieve DDMI of its responsibilities and obligations arising from this Agreement to the extent deemed by the Minister to be reasonable in the circumstances; and*
- (b) set a schedule for winding down and concluding the operation of the Advisory Board.*

Therefore, the Minister has a lot of discretionary power to set a schedule for winding down EMAB any time after commercial production ends—but only after consultation with the Parties and with EMAB. Diavik is expected to cease commercial production by the end of the first quarter of 2026.

Last year, DDMI asked the GNWT how it planned to use its discretionary power in 18.3; the GNWT responded in September 2022 by saying that the Minister cannot make a decision until after commercial production ceases – but the Parties are welcome to discuss and begin weighing in on the future of the Agreement and EMAB, so that the GNWT’s consultation process might go more quickly. All Parties agreed in January 2023 to discuss the future of the Agreement through an Environmental Agreement Working Group (EA WG), but this Group has not yet met. EMAB is not a Party and not a member of the EA WG, but has decided to request observer status.

The workshop in June was a way for the EMAB Board to discuss its own position on this matter. This report summarizes the Board’s reflections and recommendations.

EMAB Recommendation #1: *EMAB should continue based on a mutually-agreed schedule.*

The Board believes that EMAB plays an important role and recommends that EMAB should continue to exist throughout Diavik’s closure and post-closure phases, until DDMI fulfills its responsibilities under the Environmental Agreement and its license requirements. The Parties should decide together on an appropriate schedule that adjusts EMAB’s level of operations according to DDMI’s activities, scheduled monitoring requirements, and the results of performance assessment reports.

Note: one Board member did not support the part of the recommendation that reads “until DDMI fulfills its responsibilities under the Environmental Agreement and its license requirements.”

Looking back on EMAB’s work

2013 and 2019 Strategic/Action Plans

EMAB has completed two five-year plans. Both directed the Board’s focus towards the same four themes: Leadership & Governance, Oversight & Monitoring, Community Involvement, and Communications. Highlights from each plan are summarized below. Many of the same priorities and challenges have remained consistent over the past decade.

Strategic Plan 2013-2018

Leadership & Governance	Oversight & Monitoring	Community Involvement	Communications
Update and clarify board and staff authorities, roles and responsibilities	Staff capacity – created Environmental Specialist position	More frequent EMAB updates to communities	Improve communication methods
Incorporate opinions and views of all parties in a respectful and transparent manner	Assess incorporation of TK/IQ into monitoring; develop protocol for reporting TK findings	Increase community knowledge about Diavik mine and its impacts	Support Board members to better communicate with communities
Board Calendar, Operations Manual	Support Board to better understand and contribute to technical reviews (plain language, etc)	Education for youth	Re-design website and database

Action Plan 2019-2024

Leadership & Governance	Oversight & Monitoring	Community Involvement	Communications
Get Parties more familiar with Board member roles	Inform and get feedback from communities about closure	Increase community knowledge about Diavik mine and its impacts – ensure communication needs are met: 2-pg updates, radio, etc	Keep improving communication methods
Better understand conflict of interest, procedures	Ensure EMAB is focusing on most relevant issues of concern to communities	Review community participation in monitoring and training; help facilitate this	Support Board members to better communicate with communities
Get support for future role of EMAB	Assess incorporation of TK/IQ into monitoring; put TK Panel recommendations on website; ensure closure criteria incorporate TK	Education for youth	Maintain website and database

Key Strengths and Challenges

In 2019, as part of the work to evaluate the outcomes of the 2013-18 Strategic Plan and prepare a new five-year action plan, EMAB staff interviewed Land-Environment Managers from most of the Parties, as well as a GNWT representative, to get their feedback and input on EMAB's work. Below is a summary of the key strengths and challenges that have emerged, including comments from EMAB Board members during the recent workshop.

Strengths

Most of the communities' Land-Environment Managers commented that EMAB's technical reviews of DDMI reports and proposed programs and plans are very useful to them. This was echoed by Board members; EMAB is known for its thorough and informed reviews and interventions in the regulatory process.

All the Land-Environment Managers interviewed felt that EMAB should continue its work after commercial production ceases at Diavik.

EMAB has played an important role in holding regulators such as the GNWT accountable, especially where there have been regulatory gaps and the need for development of enforceable standards—for example, with regard to air quality.

Board members recognize the high quality work of the Traditional Knowledge (TK) Panel over the years (which, after the first few years, was not operated or convened by EMAB, but instead by DDMI). The TK Panel members have been knowledgeable and have made good recommendations. Up until recent years, the TK Panel had good continuity with the same two facilitators, who were well known and trusted by elders in the communities.

Prior to Covid (pre-2020), EMAB staff would provide one community update per Party each year, and one Board meeting would be held in a community each year (rotating through the affected communities/regions). EMAB has tried to support Board members to do their own outreach and communications in their communities about EMAB work. Some Board members are more proactive than others in terms of making monthly reports to leaders, sharing EMAB's annual report, and making presentations to a wide cross-section of community members during face-to-face gatherings.

Challenges

It is important to note that EMAB's budget limitations have prevented the Board from carrying out all aspects of its mandate to the fullest extent possible; it has had to focus on a limited number of strategic priorities that are developed in consultation with the Parties. Every two years a new budget must be developed and mutually agreed upon by DDMI and EMAB (as laid out in the Environmental

Agreement 4.8e). The EA specifies that the budget should be roughly equal to the previous two-year budget plus inflation. Nevertheless, at times, the budgeting process has been a major source of conflict, and EMAB and DDMI have needed to use the formal dispute resolution mechanisms laid out in the Agreement.

Some Board members felt that conflict could be reduced if the Parties amended the Environmental Agreement to change the budget negotiation process. Another way to increase certainty might be to change the “business rules” between EMAB and Diavik, as previously recommended by an arbitrator, or to establish a new memorandum of understanding (MOU) between EMAB and Diavik. Board members acknowledged that other aspects of the EA may need to be updated, given changes over the past 20 years in the regulatory landscape, Indigenous self-governance, and best practices in the use of traditional knowledge and Inuit Qaujimagatugangit. However, any changes to the EA would require unanimous approval by all the Parties and must include thorough consultation with community members in each of the Party communities; it is outside EMAB’s mandate to consult with Parties on any changes to the EA.

Board members acknowledged a longstanding challenge in terms of EMAB’s efforts to share information with affected communities so that either community members at large or community leaders are fully informed about key Project-related decisions. Board members felt that, in general, there is little awareness amongst community members and leaders about the work of the TK Panel and its recommendations, about DDMI’s responses to the TK Panel recommendations, or about Diavik’s plans and operations. Improving communications with communities was identified as a priority objective in both five-year strategic plans.

While EMAB was holding in-person meetings and information-sharing sessions regularly in affected communities prior to Covid, the pandemic put a pause on these activities, and EMAB has struggled to resume community visits ever since. Part of the challenge is that Indigenous governments report being extremely busy and bombarded with consultations and meetings of all kinds, and they cannot find a time to schedule in an EMAB visit. During the 2019 interviews, communities expressed a range of preferences for frequency and type of communications—from meetings between EMAB Board/staff and community leaders annually, to once every 2 to 3 years. Some preferred Board member briefings monthly, to twice-yearly, to “fine as is”. Communities tend to prefer summary versions of written materials, and EMAB has tried to adjust its communication methods accordingly. This is complicated by varying priority interests—one community may be primarily concerned about downstream water quality, while another is focused on caribou herd health.

EMAB used to have a budget for two days of community consultation per month per Board member appointed by an Aboriginal Party, but that was cancelled in 2016 following a budget dispute with Diavik. EMAB’s communications budget is currently for community updates, and EMAB is re-assessing the budget to make sure funds will actually cover the full cost of each community update.

EMAB found that Land-Environment Managers generally did not know what the role of their Party's Board member was supposed to be. The role of Board members is tricky because, while Board members consider themselves generally accountable to their Indigenous governments/leaders as well as their fellow community members, they are also supposed to act independently since EMAB is "arms-length" from all the Parties, including communities.

EMAB Recommendation #2: EMAB should focus on improving engagement and two-way communication with affected communities.

EMAB renews its ongoing commitment to improving information flow between EMAB and affected communities, so that community members and leaders are more informed and engaged with the Diavik project. EMAB should review its current Communications Plan and associated budget to determine whether it is on track to achieve the priority objectives from its Action Plan, and whether allocated resources are adequate.

EMAB could consider whether it is feasible to hold joint information sessions with Diavik in communities, particularly about closure and post-closure, while taking steps to ensure people are aware that EMAB is fully independent of both Diavik and government agencies.

EMAB has struggled to communicate effectively with the TK Panel since 2013 when it began to be convened by DDMI instead of EMAB (see below for more details). For the first number of years, EMAB was not invited to attend TK Panel meetings, so was unable to get a clear sense of the process of formulating TK recommendations, including what assumptions/understandings were being fed into the process. For the last few TK Panel sessions that were held, EMAB was able to attend the entire sessions. Since EMAB does not convene the Panel or have a direct relationship with Panel members, it has been difficult to evaluate or communicate to regulators or communities the extent to which Panel members have been satisfied with DDMI's responses or follow-up to their recommendations.

Key Tensions or Areas of Uncertainty

Watchdog vs. Proactive Approaches

As detailed above, the Environmental Agreement mandates EMAB to be both an independent watchdog organization, at arms-length from all the Parties, and to assist the Parties in implementing cooperative approaches to achieving the purposes and following the guiding principles of the Agreement. This creates some tension at times.

Diavik stated that it feels EMAB has been too negative at times in its comments and criticisms. All Board members agree that they would like to have a less antagonistic and more respectful working relationship between EMAB and Diavik. However, it is not antagonistic for EMAB to point out deficiencies or inconsistencies in DDMI's reports or proposed plans—this is part of EMAB's role under the EA.

It is important to distinguish between EMAB's role under the EA in assisting all the Parties to work towards common goals with better coordination and communication—and a vision of EMAB and Diavik as co-collaborators, which is not supported by the EA.

Disagreements remain as to how proactive EMAB should be, for example, in convening meetings or workshops that bring together all the Parties, or initiating programs to address concerns raised, as opposed to standing well outside the fray, offering comments and recommendations for others to take action on. Both are within the confines of EMAB's mandate; it is a question of which is the most appropriate approach to take, in which circumstances.

An example of where EMAB proactively sought to address a community concern was on the issue of “yellow haze” (visibly poor air quality). Yellow haze was raised by a Board member as a major concern in an affected community. EMAB then contracted technical expertise and worked to develop a monitoring program that would try to answer the questions being raised. The program has required cooperation from DDMI, which has been difficult to achieve at times.

EMAB has also taken the position—for example, when invited by DDMI to collaboratively develop a TK Monitoring Plan—that EMAB should not be directly involved in the development of such a monitoring plan; that EMAB must be careful to stay independent of any data gathering to be the watchdog that could critique its design or implementation.

The Diavik Fish Camp is an example where EMAB has played roles of both convenor and watchdog. This is a TK/IQ-based monitoring program, focused on testing fish palatability and texture, that was first organized by EMAB, with help from Diavik, and ran each year from 2003-2007. After that, it was added to DDMI's Aquatic Effects Monitoring Program (AEMP), becoming Diavik's responsibility under its water license, and Diavik has since organized the Fish Camp every three years.⁴ EMAB continued to be a forum to discuss the results of fish monitoring and raise awareness of potential issues to watch for, for example mercury levels in fish. In 2021, traditional knowledge holders at the Fish Camp raised serious concerns about parasite levels, insisting that a significant deterioration in fish health had occurred. DDMI brought in scientists who had a different interpretation of the Fish Camp results, and conflict ensued with some breakdown in trust. At first, EMAB chose to primarily focus on amplifying community members' concerns. Now, EMAB is taking a more proactive approach towards solving the issue. EMAB proposes to host a workshop about fish parasites, including knowledge holders who participated in the Camp as well as biologists. EMAB's funding proposal for this workshop is currently under consideration by DDMI.

See EMAB Recommendation #3 below: **EMAB should seek out more opportunities to be proactive in convening or assisting the Parties to find cooperative approaches.**

⁴ Participants from the five Aboriginal Parties stay at the camp for three to four days to complete this study. Fish are collected from Lac de Gras and are used to analyze taste and texture.

Role in Decision-Making

EMAB was clearly not set up to be a decision-maker—the word “advisory” is right in its name. However, the Agreement does seem to envision that EMAB could assist the Parties in forging cooperative approaches to challenges.

At the workshop, Diavik expressed hope that EMAB could be transformed into more of a consultative body. EMAB has been the only standing forum that regularly brings together the mine operator and the GNWT with a diverse group of affected communities (including Inuit, Dene and Métis, which have often struggled to collaborate). From Diavik’s perspective, it seems like the perfect chance to get together and hash things out with all the Parties—find out where each one stands, negotiate solutions that could satisfy all interests.

However, the EA does not intend for EMAB to function that way, since Board members are independent of the Parties that appointed them and cannot speak for any Party. Some Board members pointed out that part of the reason that EMAB can accomplish what it does, is because it stands outside the political arena, where ongoing tensions between some Parties might lead to deadlock. If there were only official leaders around the table, there could be “too many captains on the team” and constant friction.

Board members reminded everyone that treaties are still ultimately the basis for all relationships. A forum like EMAB could never replace or lessen the constitutional obligations for consultation with each of the Indigenous governments by regulatory decision-makers. However, discussions do not need to be happening in isolation from each of the other affected communities.

Official representatives from each of the Parties came together and signed the Environmental Agreement in 2000, but have not met regularly since then, and there remains a need for further joint decision-making on the Diavik project, particularly on the future of EMAB, or any potential amendments to the EA. There is no leader per se appointed to round up all the Parties—and it was suggested that EMAB might play a useful role in coordinating gatherings of decision-makers from each of the Parties.

EMAB Recommendation #3: EMAB should seek out more opportunities to be proactive in convening or assisting the Parties to find cooperative approaches.

While EMAB must uphold its role as an independent watchdog, it is also mandated to assist the Parties in implementing cooperative approaches to solving problems in ways that align with the guiding principles of the Agreement, and it could be more proactive in seeking out opportunities to do so. For example, EMAB could convene more multi-stakeholder workshops focused on understanding concerns raised by community members, similar to the proposed workshop on fish parasites. Any such workshops or other non-budgeted items would require Diavik to agree to provide additional funding. EMAB could be proactive in convening meetings of the Parties, for example to discuss the future of EMAB, while acknowledging that EMAB is not in a position to direct the Parties. The Board may also be able to support the work of the TK Working Group through logistical support or by facilitating access to EMAB resources and expertise, depending on what assistance the Group requires.

Traditional Knowledge (TK) / Inuit Qaujimagatuqangit (IQ) Panel

As mentioned above, section 4.9 in the Agreement allows EMAB to set up a panel of traditional knowledge experts to advise the Board from time to time. For the first decade or so of its existence, EMAB convened TK/IQ Panels on an ad hoc basis focused on specific topics. In 2011, EMAB became more actively involved in bringing TK/IQ holders together to address issues such as caribou and closure planning. EMAB held three TK/IQ Panel sessions from 2012 to 2013 focused on mine closure.

The Technical Report from a June 2012 TK/IQ Panel Session spoke directly to the need for EMAB to revisit the TK/IQ Panel's Terms of Reference and clarify its mandate, even as the Panel was actively learning through experience and highlighting emerging best practices:

The panel is not directly answerable to Aboriginal Parties/communities or to Diavik – rather, it was established to provide advice to EMAB. The Panel does not carry out TK/IQ studies or consultation; this is Diavik's responsibility, working in partnership with the Aboriginal Parties.

As a regional body of knowledge holders, the TK/IQ Panel is well positioned to review existing and ongoing community-based TK/IQ studies and consultation processes, identify best practices and guidelines for these processes, and develop initial scoping and methods for new community-based processes around mine closure.

There is bound to be some level of TK/IQ knowledge sharing in activities of a panel of TK/IQ knowledge holders. However, such knowledge sharing

*should be considered as issues scoping and piloting of methods, as well as a basis for assessing and synthesizing community inputs.*⁵

Instead of clarifying its mandate along these lines, the TK/IQ Panel evolved in a different direction. Starting in 2013, Diavik made a unilateral decision⁶ to convene and facilitate the TK Panel independently of EMAB, so that recommendations from traditional knowledge holders could go directly to Diavik without EMAB as a filter. This shift happened at a time of significant turnover amongst EMAB Board members and staff. As the convenor, Diavik had stronger influence over how often the Panel met and which topics the Panel focused on, while managing logistical aspects such as meeting invites. EMAB was not invited to attend full Panel meetings until 2020.⁷ The company believed that a TK Panel could provide the most value, not as an advisor on processes and best practices, but as a source of concrete TK-based recommendations that Diavik could take action on.

While the Panel has produced useful recommendations on mine operations, some of which Diavik has followed, the focus has more often been on closure design and planning. DDMI does not yet have an approved Final Closure Plan, so it is very much still an active question to what extent the Panel's work will be incorporated into closure and reclamation. The Panel's recommendations and Diavik's responses are included in DDMI's closure planning reports and can be found on the EMAB website in its [document library](#).

EMAB's role since 2013 has been to assess the results of the TK Panel's work and Diavik's responses, but this has been problematic. For many years when EMAB was not permitted to attend Panel meetings, it was difficult for EMAB to understand how the Panel formulated its recommendations and what assumptions and technical information were fed into the process. Board members also noted that outcomes of discussions with knowledge holders can hinge greatly on the skill of interpreters, who must have specialized training in how to translate technical terms related to mine operations and environmental science.

All Board members except for DDMI's appointee feel that the role and future of the TK/IQ Panel should not be a unilateral decision made by Diavik. According to the Agreement, EMAB has the power to set up its own separate TK Panel, although any associated budget must be negotiated with Diavik.

⁵ Page 49, *Renewing Our Landscape: Envisioning Mine Closure and Reclamation of the North Country Rock Pile, Diavik Diamond Mine*--Technical Report June 26-28, 2012 TK/IQ Panel Session, Compiled by SENES Consultants, published by EMAB in December 2012. Found in EMAB's online document library: https://emab.ca/sites/default/files/session_2_renewing_our_landscape_-_north_country_rock_pile_26-28_june_2012.pdf

⁶ EMAB agreed to have Diavik convene one meeting of the TK Panel, after which Diavik informed the TK Panel that DDMI would convene TK Panel meetings thereafter.

⁷ In 2017, EMAB was invited to attend the final day of a TK Panel meeting, where recommendations were shared.

EMAB has been advocating that DDMI should table its TK Monitoring Plan, which could be considered the culmination of all the efforts of the TK/IQ Panels over the years. However, the latest version of a Final Closure Plan presented to the Wek'èezhii Land and Water Board did not include a TK Monitoring Plan. According to Diavik, it tried to get the TK Panel to design a post-closure monitoring program, but the Panel did not feel it was their role to design such a program. Diavik has subsequently put the TK Panel “on pause,” as it does not see a further useful role for the Panel. Instead, a January 2023 meeting of all the Parties (separate from EMAB) led to the establishment of a TK Working Group that is tasked with figuring out how a TK Monitoring Plan can be developed that all Parties are satisfied with.

EMAB Recommendation #4: EMAB should support work by the Parties to jointly establish a TK Monitoring Plan for closure, and if this process does not produce a viable Plan, consider re-establishing its own TK/IQ Panel.

See section below for more details, entitled: **Support TK/IQ-based/Community Monitoring.**

Most important aspects of EMAB’s mandate for closure and post-closure

Diavik expects to reach the end of its commercial production phase by the first quarter of 2026. During the subsequent closure and post-closure phases, environmental monitoring approaches will shift but remain extremely important, and this will continue to feed into adaptive management even when there is no day-to-day DDMI management presence on site.

This section focuses on two aspects of EMAB’s mandate that will be particularly important during closure and post-closure: review of DDMI reports and regulatory intervention, as well as support for TK-based/community monitoring.

EMAB has already been advocating to ensure that long-term monitoring of the Diavik mine site is planned to last long enough to track potential problems with closure performance. Contamination may not be noticeable in the short-term. For example, the effects of potentially acid generating rock (PAG) will only be seen in seepage over time once the neutralizing ability of surrounding rock is used up. Relatively rare events, such as floods, could occur many years into the future but significantly affect discharge and potentially surrounding water quality.

Review of Reports and Regulatory Intervention

EMAB can continue to serve a critical role throughout closure and post-closure by providing technical reviews of DDMI reports, and by distributing these to affected communities and the general public. Diavik has proposed to continue submitting

Aquatic Effects Monitoring Program reports until at least 2049,⁸ wildlife monitoring reports annually until 2033, and performance monitoring reports until at least 2050.⁹ Performance Assessment Reports on all the components are scheduled to be submitted in 2033. The Performance Assessment Reports (PAR's) will be key documents to review since they will determine either the need for more monitoring and more PAR's, or otherwise, whether a component of reclamation has been successfully completed, which would lead to Diavik being relieved of responsibility and most or all of its security deposit for that component being released.

Based on its close watch of all monitoring reports listed above, and its communications with community members about these results, EMAB will be a valuable intervenor in regulatory decisions that must assess whether the land and water has been cleaned up and restored well enough to meet license requirements and expectations of communities. These will be extremely consequential decisions that are likely to attract much input from affected communities and the public.

This supports **EMAB's recommendation #1: EMAB should continue based on a mutually-agreed schedule.**

Support TK/IQ-based/Community Monitoring

Diavik has committed to reclaim the land and water around the mine site to as close to its original state as possible. Traditional knowledge/IQ holders are perhaps best placed to assess the overall state of the land and water during closure and post-closure, in relation to how they have known it to be for generations past. Diavik has agreed to fund and implement a TK/IQ-based Monitoring program as part of the closure process, as a requirement under its water license; however, this has yet to be designed or approved.

So far, the main type of TK/IQ-based monitoring implemented by Diavik has been the Fish Camp (held every three years to test fish palatability and texture). DDMI has been offering on-the-job training in science-based monitoring in order to work as part of the DDMI environmental team but has not seen a role for itself in implementing a training program in TK/IQ-based monitoring.

The Agreement tasks EMAB with making recommendations on community participation in environmental training and monitoring (4.2g) and also specifies that EMAB should provide a "meaningful role" for Aboriginal communities in the review and implementation of environmental monitoring, implying that TK/IQ-based monitoring should take a prominent place. This is also one of Diavik's obligations according to its water license.

⁸ Diavik proposes to continue to submit AEMP Annual Reports, with comprehensive reports every three years up to 2028, then every three years after to 2037 and every 6 years after that to 2049.

⁹ Performance Monitoring will take place every year until 2032; after that there will only be dam safety inspections, which are required as long as there is a dam in place. In addition, Reclamation Completion Reports (RCR's) will be submitted until 2029.

EMAB has seen its role so far as both an advocate of community/TK/IQ-based monitoring and a reviewer of any proposals or plans that are brought forward. At one point EMAB had “capacity-building” funding which could have been used for community activities such as monitoring training, but this ended up being cut from the EMAB budget during a budget planning dispute with Diavik. One of the priority actions that EMAB identified in its 2019-2024 Action Plan was to “facilitate opportunities for community involvement in environmental monitoring,” including the following points:

- encourage Diavik to develop policy on environmental monitoring training and define qualifications;
- monitors should be independent;
- address obstacles to training and involvement; and
- incorporate TK. (Action 3.2.1).

Currently, the ball is in the court of the TK Working Group, established jointly by all the Parties in January 2023, which is tasked with figuring out a path forward on a TK/IQ Monitoring Plan for Diavik for closure and post-closure. EMAB awaits the Working Group’s recommendations, including a recommended role for EMAB in how it can best support community-based monitoring.

EMAB Recommendation #4: EMAB should support work by the Parties to jointly establish a TK Monitoring Plan for closure, and if this process does not produce a viable Plan, consider re-establishing its own TK/IQ Panel.

If the TK Working Group is able to produce a TK/IQ Monitoring Plan, then it would be submitted to the Land and Water Board and circulated for comment—EMAB would then solicit input from communities (who could submit feedback to the WLWB separately) and then provide its assessment and suggestions to the WLWB, with the goal of producing the best possible TK/IQ-based/community monitoring program.

If the Working Group is not able to come up with a TK/IQ Monitoring Plan or a path forward, then EMAB Board members should consider re-establishing its own TK/IQ Panel, as per section 4.9 of the EA, specifically to advise EMAB on an appropriate process for establishing a TK/IQ Monitoring Plan (including suggestions for design and implementation) that could be supported by all the affected communities.

Aspects for Consideration in Design and Implementation of a TK/IQ Monitoring Plan

The following points were raised during the EMAB workshop, or in previous documented EMAB work, as aspects for EMAB to consider—either in its assessment of any TK/IQ Monitoring Plan drafted by another body such as the TK Working Group, or in terms of reference for a new TK/IQ Panel to be potentially set up by EMAB to examine this issue.

In 2019, when EMAB staff interviewed Land-Environment Managers from indigenous governments, there was general interest in having communities

involved in monitoring, but many practical obstacles were noted that need to be overcome. For example, environmental monitoring is often a part-time job and usually those with skills/training are either already employed or looking for full-time employment. Secondly, there is no one standard training or certification process for Indigenous environmental monitors or TK-based monitors—different programs currently exist in at least some of the affected communities, including versions of the [Indigenous Guardians](#) program, the [BEAHR](#) program, or the Tlicho Government’s [Ekwò Nàxoèhdee K’è](#) (Boots on the Ground) program.

The Tlicho Government has independently established [Ekwò Nàxoèhdee K’è](#) (Boots on the Ground), a monitoring program that has done its own analysis and research on the impact of all mines in the region on caribou migration, water, etc. However, this program does not involve the other affected communities or knowledge holders from Akaitcho, Métis, or Inuit communities, who may have different ways of knowing and monitoring the land.

There is a tension between the desire for community monitors to be independent, as EMAB specified in its Action Plan, and the acknowledgement that Diavik must not only be the funder but ultimately the one responsible and accountable for all monitoring related to Diavik, in order to fulfill its regulatory commitments. That accountability implies that Diavik needs adequate oversight and control over any TK-based monitoring program.

Board members suggested that, ideally, multiple diamond mines should be working together on some sort of regional TK-based monitoring program, since a more holistic traditional perspective would need to consider wider effects across the landscape than simply the Diavik mine footprint alone. However, it is perhaps too late and there may be no available mechanisms for regulators to require such collaboration amongst industry proponents. Should such a regional monitoring program discover contamination or adverse effects, it could be difficult to assign responsibility to one or more of the mine operators.

Conclusion and Summary of Recommendations

The following is a summary of recommendations that were supported by EMAB members at the June 2023 workshop:

1. EMAB should continue based on a mutually-agreed schedule.

The Board believes that EMAB plays an important role and recommends that EMAB should continue to exist throughout Diavik’s closure and post-closure phases, until DDMI fulfills its responsibilities under the Environmental Agreement and its license requirements.¹⁰ The Parties should decide together

¹⁰ Note: one Board member did not support the part of the recommendation that reads “until DDMI fulfills its responsibilities under the Environmental Agreement and its license requirements.”

on an appropriate schedule that adjusts EMAB's level of operations according to DDMI's activities, scheduled monitoring requirements, and the results of performance assessment reports.

2. EMAB should focus on improving engagement and two-way communication with affected communities.

EMAB renews its ongoing commitment to improving information flow between EMAB and affected communities, so that community members and leaders are more informed and engaged with the Diavik project. EMAB should review its current Communications Plan and associated budget to determine whether it is on track to achieve the priority objectives from its Action Plan, and whether allocated resources are adequate.

EMAB could consider whether it is feasible to hold joint information sessions with Diavik in communities, particularly about closure and post-closure, while taking steps to ensure people are aware that EMAB is fully independent of both Diavik and government agencies.

3. EMAB should seek out more opportunities to be proactive in convening or assisting the Parties to find cooperative approaches.

While EMAB must uphold its role as an independent watchdog, it is also mandated to assist the Parties in implementing cooperative approaches to solving problems in ways that align with the guiding principles of the Agreement, and it could be more proactive in seeking out opportunities to do so. For example, EMAB could convene more multi-stakeholder workshops focused on understanding concerns raised by community members, similar to the proposed workshop on fish parasites. Any such workshops or other non-budgeted items would require Diavik to agree to provide additional funding. EMAB could be proactive in convening meetings of the Parties, for example to discuss the future of EMAB, while acknowledging that EMAB is not in a position to direct the Parties. The Board may also be able to support the work of the TK Working Group through logistical support or by facilitating access to EMAB resources and expertise, depending on what assistance the Group requires.

4. EMAB should support work by the Parties to jointly establish a TK Monitoring Plan for closure, and if this process does not produce a viable Plan, consider re-establishing its own TK/IQ Panel.

The Parties to the EA were convened by Diavik in January 2023 and established a TK Working Group to figure out a path forward on a TK Monitoring Plan for closure and post-closure. If this Working Group is able to produce a TK Monitoring Plan, then Diavik would submit it to the Land and Water Board, which would circulate the Plan for comment—EMAB would then solicit input from communities (who could submit feedback to the WLWB separately) and then provide its assessment and suggestions to the WLWB, with the goal of producing the best possible TK-based/community monitoring program.

If the Working Group is not able to come up with a TK Monitoring Plan or a path forward, then EMAB should consider re-establishing its own TK/IQ Panel, as per section 4.9 of the EA, specifically to advise EMAB on an appropriate process for establishing a TK Monitoring Plan (including suggestions for design and implementation) that could be supported by all the affected communities.

Next steps

EMAB should communicate the results of this report—including the Board’s four main recommendations—to each of the Parties, including each of the affected communities, and invite feedback, via face-to-face meetings where possible.

EMAB should make a presentation to the Environmental Agreement Working Group to provide its recommendations on the future role of EMAB, along with the rationale contained in this report. EMAB should similarly set up a meeting with the Minister.

EMAB should follow up on its request for observer status with the TK Working Group in order to keep track of progress the Parties are making towards jointly designing a TK Monitoring Plan for closure and post-closure. EMAB can also offer logistical support and assistance to the TK Working Group, where appropriate.

Appendix A. List of Workshop Participants

Board Members

Charlie Catholique (Chair) – Lutsel K'e Dene First Nation (LKDFN)
Violet Camsell-Blondin (Secretary-Treasurer) – Tłıchǫ Government (TG)
Sean Erasmus – Yellowknives Dene First Nation (YKDFN)
Kelly Fischer – Government of the Northwest Territories (GNWT)
Gord Macdonald – Diavik Diamond Mine Inc. (DDMI)
Marc Whitford – North Slave Métis Alliance (NSMA)
William Aglukkaq – Kitikmeot Inuit Association (KIA) - alternate

Staff

John McCullum – Executive Director

Facilitator

Shauna Morgan

Appendix B: Environmental Agreement

Lead Contacts

John McCullum
Executive Director
Environmental Monitoring Advisory Board
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Shauna Morgan
Facilitator, Yellowknife
Shauna.yk@gmail.com

ENVIRONMENTAL AGREEMENT

This Agreement made as of the 8th day of March, 2000.

BETWEEN:

HER MAJESTY THE QUEEN IN RIGHT OF CANADA
as represented by the
Minister of Indian Affairs and Northern Development

(hereinafter referred to as "Canada")

AND

THE GOVERNMENT OF THE NORTHWEST
TERRITORIES
as represented by the
Minister of Resources, Wildlife and Economic Development

(hereinafter referred to as the "GNWT")

AND

DIAVIK DIAMOND MINES INC.

(hereinafter referred to as "DDMI")

AND

DOGRIB TREATY 11 COUNCIL

AND

LUTSEL K'E DENE BAND

AND

YELLOWKNIVES DENE FIRST NATION

AND

NORTH SLAVE MÉTIS ALLIANCE**AND****KITIKMEOT INUIT ASSOCIATION****RECITALS**

- A. WHEREAS DDMI as manager of an unincorporated Joint Venture with Aber Diamond Mines Ltd. (“Aber”) proposes to establish the Project to be located at the East Island in Lac de Gras, Northwest Territories for the production of rough diamonds;
- B. AND WHEREAS the Responsible Authorities conducted a comprehensive study of the Project pursuant to the *Canadian Environmental Assessment Act* and issued the Comprehensive Study Report wherein the Responsible Authorities concluded that, taking into account the implementation of appropriate mitigation measures, the Project is not likely to cause significant adverse environmental effects;
- C. AND WHEREAS the Minister of the Environment and the Responsible Authorities have determined that the Project, taking into account the implementation of appropriate mitigation measures, is not likely to cause significant adverse environmental effects;
- D. AND WHEREAS the CSR includes a requirement for the Minister, as the lead Responsible Authority, to develop an environmental agreement to provide a formal mechanism to ensure that the mitigation measures outlined in DDMI’s Commitments, in addition to the mitigation measures and follow-up requirements which will be specified as terms and conditions by Regulatory Instruments, are appropriately implemented and monitored;
- E. AND WHEREAS the air, land, water, aquatic resources, and wildlife are essential to the lives and well-being of the Aboriginal Peoples;
- F. AND WHEREAS DDMI proposes to conduct adaptive environmental management to minimize the environmental impact of the Project;
- G. AND WHEREAS DDMI and the Aboriginal Peoples have entered into or are in the process of negotiating and settling Participation Agreements in connection with the Project;

Article XV	Security and Enforcement	Page 29
Article XVI	Resolution of Disputes	Page 39
Article XVII	General Provisions	Page 41
Article XVIII	Term	Page 48

- H. AND WHEREAS, DDMI and the GNWT have entered into a Socio-economic Monitoring Agreement which is intended to meet the requirement of the CSR and provides for the involvement of Aboriginal Peoples.

NOW THEREFORE, in consideration of the premises and the covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties hereto, the Parties covenant and agree as follows:

ARTICLE I

STATEMENT OF PURPOSE AND GUIDING PRINCIPLES

1.1 PURPOSE

This Agreement is intended to be a legally binding agreement for the achievement of the following purposes:

- (a) To ensure that the mitigation measures outlined in DDMI's Commitments and in the Responsible Authorities' conclusions as documented in the CSR are appropriately implemented;
- (b) To provide for additional monitoring which, in conjunction with the monitoring requirements of Regulatory Instruments, will serve to verify the accuracy of the environmental assessment of the Project and the effectiveness of mitigation measures, and whether Commitments are being fulfilled;
- (c) To facilitate the use of holistic and ecosystem-based approaches for the monitoring, management and regulation of the Project;
- (d) To respect and protect air, land, water, aquatic resources, wildlife, archaeological and cultural resources, and the land-based economy that are essential to the way of life and well-being of the Aboriginal Peoples;
- (e) To create opportunities for community and public input and participation;
- (f) To provide advice and direction to DDMI in order to assist DDMI in managing the Project consistent with these purposes;
- (g) To maximize the effectiveness and co-ordination of environmental monitoring and regulation of the Project; and

(h) To facilitate effective communication about the Project with Affected Communities and effective participation of the Aboriginal Peoples and the general public in the achievement of the above purposes.

1.2 GUIDING PRINCIPLES

The Parties agree to carry out their responsibilities under this Agreement and the Regulatory Instruments consistently with the purposes in Article 1.1 and guided by the following principles:

- (a) Adaptive environmental management;
- (b) Sustainable development;
- (c) Design and implementation of Environmental Protection Measures to minimize adverse effects on Environmental Quality to the extent technically and economically feasible;
- (d) Precautionary Principle;
- (e) Promotion of capacity-building for the Aboriginal Peoples respecting Project-related environmental matters;
- (f) Recognition of the particular environmental values of the Lac de Gras region;
- (g) Full consideration and use of both traditional knowledge and other scientific information where appropriate; and
- (h) Promotion of a co-operative approach among the Parties respecting Project-related environmental matters.

ARTICLE II

NO PREJUDICE

2.1 NO PREJUDICE

This Agreement is without prejudice to the positions of the Parties respecting any:

- (a) existing Aboriginal or treaty rights of the Aboriginal Peoples;
- (b) on-going or future land claims or self-government negotiations affecting Aboriginal Peoples;
- (c) constitutional changes which may occur in the Northwest Territories;
- (d) changes to legislation or regulations resulting from the settlement of land claims and self-government negotiations, or resulting from constitutional changes or devolution; or
- (e) existing or future Participation Agreements.

2.2 TRANSITIONAL

In the event that jurisdiction or regulatory authority relating to the Project or any aspect of the Project, is transferred or devolved as a result of constitutional change, treaty, self-government or land claim agreement, or otherwise, the Parties shall negotiate, in good faith, to amend this Agreement to reflect such transfer or devolution, while maintaining the purposes and principles of this Agreement.

ARTICLE III

INTERPRETATION

3.1 DEFINITIONS

In this Agreement, unless the context otherwise indicates, the following terms shall have the meanings ascribed to them below:

“**Aboriginal Peoples**” means the Dogrib Treaty 11 Council, the Lutsel K’e Dene Band, the Yellowknives Dene First Nation, the North Slave Métis Alliance and the Kitikmeot Inuit Association.

“Affected Communities” means the communities identified in the CSR which are affected in relation to the subject matter within which they are referenced in the CSR.

“Annual Report” has the meaning attributed thereto in Article 12.1.

“Arbitrator(s)” means the arbitrator or arbitrators selected pursuant to Article 16.3 in respect of any particular dispute.

“Archaeological Site” means a site or work of archaeological, ethnological or historical importance, interest, or significance or a place where an archaeological specimen is found and includes explorers’ cairns.

“Commercial Production” means production at the rate of 80% of design capacity for the Project processing plant for 30 consecutive days.

“Commitment” means:

- (a) any commitment to a mitigation measure or a follow-up program made by DDMI, whether
 - (i) given to a Responsible Authority in the course of seeking or securing any recommendation or decision under the *Canadian Environmental Assessment Act* with respect to the Project, or
 - (ii) given to the governmental agency responsible for issuing any Regulatory Instrument, in the course of seeking or securing the issuance of the Regulatory Instrument,
 provided that
 - (iii) where the commitment as originally given by DDMI was modified by DDMI and where the modification was accepted by the Responsible Authority (in the case of a commitment referred to in paragraph (a)(i) of this definition) or the responsible governmental authority (in the case of a commitment referred to in paragraph (a)(ii) of this definition) in the recommendation, decision or Regulatory Instrument, or prior to the making or issuance thereof, “Commitment” means the commitment as so modified, and
 - (iv) where the commitment as originally given by DDMI is departed from in order to comply with the requirements of the principle of adaptive environmental management, “Commitment” means the commitment modified to comply with those requirements; and
- (b) any obligation imposed upon DDMI by or pursuant to the terms of any such recommendation, decision, or Regulatory Instrument.

“Consult” or “Consultation” shall mean, at a minimum:

- (a) the provision, to the party to be consulted, of notice of a matter to be decided in sufficient form and detail to allow that party to prepare its views on the matter;
- (b) the provision of a reasonable period of time in which the party to be consulted may prepare its views on the matter, and provision of an opportunity to present such views to the party obliged to consult; and
- (c) full and fair consideration by the party obliged to consult of any views presented.

“CSR” means the report entitled “Comprehensive Study Report - Diavik Diamonds Project” dated June 1999 and includes the Responsible Authorities’ Response to Public Comments dated September 1999.

“\$” means Canadian dollars.

“Effective Date” has the meaning assigned to it in Article 18.1 (a).

“Environment” means the components of the Earth, and includes:

- (a) land, water, and air, including all layers of the atmosphere,
- (b) all organic and inorganic matter and living organisms, and
- (c) the interacting natural systems that include components referred to in paragraphs (a) and (b)

“Environmental Management Plans” has the meaning attributed thereto in Article VI.

“Environmental Monitoring Advisory Board” means the Advisory Board referred to in Article IV.

“Environmental Monitoring Programs” has the meaning attributed thereto in Article VII.

“Environmental Plans and Programs” means the Environmental Management Plans, Environmental Monitoring Programs, the Reclamation and Abandonment Plan and any other environmental management plans or environmental monitoring programs carried out or conducted in connection with the Project.

“Environmental Protection Measures” means all measures taken to effect Environmental Quality, including but not limited to, assessment and prediction of impacts, monitoring, measures to avoid or mitigate impacts, setting of limits for environmental degradation, and measures for construction, operations, closure, reclamation and abandonment of the Project.

“Environmental Quality” means the state of the environment at any time as compared to natural, unaltered characteristics of the area with respect to biological diversity and ecosystem structures and processes. Environmental Quality is maximized when measured indicators show that ecological processes are functioning naturally, ecosystem structure and reproductive capacity of animal and plant populations is unimpaired, and human interference has negligible impacts.

“Joint Venture” means the unincorporated joint venture established by the parties to the Joint Venture Agreement.

“Joint Venture Agreement” means the agreement between DDMI and Aber.

“Land Leases” means the following leases under the *Territorial Lands Act*: 76D/8-5-2 (Water Lot B A154/418), 76D/8-6-2 (Quarry/PKC/North Inlet), 76D/8-7-2 (Infrastructure), 76D/9-5-2 (Airstrip), and 76D/9-9-2 (Water Lot E A21), which as of the date of this Agreement, have not yet been fully executed; and includes any renewal, amendment or replacement thereof.

“Minister” means the Minister of Indian Affairs and Northern Development.

“Minister's Report” means a report that may be provided by the Minister to DDMI in the event that any Annual Report, Environmental Management Plan, or Environmental Monitoring Program provided to the Minister by DDMI is determined by the Minister to be deficient.

“Notice of Default” means a notice which may be issued by the Minister upon the occurrence of any non-compliance by DDMI with any provisions of this Agreement describing the specific default or defaults including a requirement to rectify such default or defaults.

“NWT” means the Northwest Territories.

“Nunavut” means the Territory of Nunavut.

“Participation Agreements” means those participation agreements, also known as impact benefit agreements or other similar agreements, entered into between DDMI and the Aboriginal Peoples with respect to the Project and as same may be supplemented, revised, restated or replaced from time to time during the term of this Agreement.

“Parties” means those parties listed on the face page and second page of this Agreement who actually sign this Agreement in accordance with the provisions of Article 18, and **“Party”** shall mean any one of them.

“Precautionary Principle” means, where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing reasonable measures to prevent environmental degradation.

“Project” means the Project described in the Project Description Submission submitted by DDMI in March 1998 for the purpose of providing the Responsible Authorities with sufficient information to initiate the Federal Environmental Assessment Process, with such refinements or alterations as have been submitted since the Project Description Submission and considered in the CSR or which are required by Responsible Authorities or regulatory authorities.

“Reclamation and Abandonment Plan(s)” has the meaning attributed thereto in Article X.

“Regulatory Instrument(s)” means any authorization, licence, lease, or permit required under any legislation required for the carrying out of the Project and includes without limitation, the Water Licence, the Fisheries Authorization(s) issued under s.35 of the *Fisheries Act*, the Land Use Permits, the Land Leases, the Explosives Factory Licences, and the Navigable Waters Permits.

“Responsible Authorities” means those departments identified as such in the CSR.

“Socio-economic Monitoring Agreement” means the agreement made the 2nd day of October, 1999 between the GNWT and DDMI pursuant to the requirements of the CSR.

“Water Licence” means the Type A Water Licence #N7L2-1645 for which original application was made by DDMI on March 4, 1998, revised September 10, 1999, and which as of the date of this Agreement, has not yet been issued by the Northwest Territories Water Board pursuant to the *Northwest Territories Waters Act* and *Northwest Territories Waters Regulations* and includes any renewal, amendment or replacement under that or any successor or other applicable legislation.

3.2 EXTENDED MEANINGS

Words importing the singular number include the plural and vice versa; words importing gender include the masculine, feminine and neuter genders; words importing persons include firms and corporations.

3.3 TIME OF ESSENCE

Time shall be of the essence in all respects of this Agreement.

3.4 BUSINESS DAY

Whenever a payment to be made or action to be taken under this Agreement is required to be made or taken on a day which is a Saturday, Sunday or statutory holiday in the NWT, then such payment shall be made or action taken on the next succeeding day that is not a Saturday, Sunday or statutory holiday in the NWT.

3.5 REFERENCES

References to an article, section, subsection, paragraph or schedule shall be construed as references to an article, section, subsection, paragraph or schedule to this Agreement unless the context otherwise requires and all references to this Agreement mean this Environmental Agreement dated as of March 8, 2000.

3.6 HEADINGS

The division of this Agreement into articles and subsections and the insertion of headings are for convenience of reference only and shall not alter the construction or interpretation of this Agreement.

3.7 LEGISLATION

A reference to any statute shall be construed as including any regulations promulgated thereunder, any amendments thereto, and any successor legislation.

ARTICLE IV

ENVIRONMENTAL MONITORING ADVISORY BOARD

4.1 ENVIRONMENTAL MONITORING ADVISORY BOARD

- (a) The Environmental Monitoring Advisory Board (the "Advisory Board") for the Project shall be established as a non-profit organization under the *Societies Act*, R.S.N.W.T 1988, c. S-11. Canada shall arrange to have the Advisory Board established within sixty (60) days of the coming into effect of Article IV.
- (b) The costs incurred by Canada in establishing the Advisory Board shall be credited against Canada's contribution to the first year's budget under Article 4.8(d).

4.2 MANDATE OF THE ADVISORY BOARD

The Advisory Board shall operate at arm's length and independent from the Parties, and shall perform its functions consistently with the purposes and guiding principles in Article I. The mandate of the Advisory Board shall be, in respect of the Project, to:

- (a) provide an integrated approach to achieving the purposes in Article I;
- (b) assist the Parties to implement a co-operative approach to achieving the purposes and implementing the guiding principles in Article I;
- (c) serve as a public watchdog of the regulatory process and the implementation of this Agreement;
- (d) review Environmental Plans and Programs, Annual Reports, Environmental Protection Measures, compliance or monitoring reports and other reports and data bearing on Environmental Quality that are produced by any of the Parties or regulatory authorities pursuant to this Agreement, Regulatory Instruments and laws of general application;
- (e) in respect of a matter reviewed pursuant to (d), make recommendations for the achievement of the purposes and guiding principles in Article I, to DDMI, the Minister and any other Party or body having regulatory or management responsibility for the matter;

- (f) make recommendations on issues relating to access for purposes of wildlife harvesting;
- (g) make recommendations respecting the participation of each of the Aboriginal Peoples and Affected Communities in training initiatives and monitoring programs bearing on Environmental Quality;
- (h) make recommendations concerning the need for and design of traditional knowledge and other studies, and, where appropriate, facilitate the management and implementation of these studies;
- (i) facilitate programs to provide information to Affected Communities and the general public on matters bearing on Environmental Quality;
- (j) report to the Parties and the public on the Advisory Board's activities and the achievement of its mandate;
- (k) provide an accessible and public repository of environmental data, studies and reports relevant to the Advisory Board's mandate;
- (l) participate as an intervenor, as appropriate for the achievement of its mandate, in regulatory processes, the dispute resolution process under this Agreement and other legal processes; and
- (m) provide a meaningful role for each of the Aboriginal Peoples in the review and implementation of environmental monitoring plans in respect of the Project.

NOT IMPLEMENTATION
NO RESEARCH
NO FUNDING

4.3 The Minister, DDMI, or any other Party, shall within sixty (60) days of receipt of any written recommendation of the Advisory Board directed to it, give full and serious consideration to the written recommendation; and either:

- (a) accept for implementation a written recommendation of the Advisory Board that is determined by the recipient to be appropriate and report to the Advisory Board to that effect; or
- (b) provide the Advisory Board with written reasons where it has been determined by the recipient that the recommendation is not appropriate and will not be implemented.

4.4 The Minister shall encourage any regulatory authority to which a written recommendation is provided by the Advisory Board to comply with the requirements in Article 4.3.

4.5 COMPOSITION OF THE ADVISORY BOARD

(a) Subject to Article 4.6 (a), the Parties may appoint their respective members to the Advisory Board as follows:

Dogrib Treaty 11 Council..... 1 representative

Yellowknives Dene First Nation.....1 representative

Lutsel K'e Dene Band.....1 representative

Kitikmeot Inuit Association 1 representative

North Slave Métis Alliance 1 representative

GNWT 1 representative

Government of Canada..... 1 representative

DDMI 1 representative

(b) Subject to Article 4.6 (b), the Government of Nunavut may appoint one representative to the Advisory Board.

(c) The Parties may jointly appoint two public representatives to the Advisory Board.

(d) Subject to Article 4.6 (a) and (b), each of the Parties and the Government of Nunavut may appoint one alternate representative.

(e) Either or both of the representative and the alternate representative appointed to the Advisory Board by the Parties and the Government of Nunavut shall be resident in the Northwest Territories or Nunavut.

4.6 FUNCTIONING OF THE ADVISORY BOARD

Each Party to this Agreement and the Government of Nunavut shall be entitled to appoint representatives to the Advisory Board as follows:

- (a) A representative and an alternate shall be appointed by each Party within sixty (60) days, or as soon as practicable, following the later of the signing of this Agreement by that particular Party or the conditions in Article 18.1(c) being satisfied or waived;
- (b) The Government of Nunavut shall appoint its representative and alternate within sixty (60) days, or as soon as practicable, following the conditions in Article 18.1(c) being satisfied or waived;
- (c) Notice of appointments shall be given in writing to the Minister, and to the Chair of the Advisory Board once a Chair has been appointed;
- (d) Each of the Parties and the Government of Nunavut may, from time to time, change the representatives on the Advisory Board appointed by it, upon notice in accordance with Article 4.6(c);
- (e) The Parties may, from time to time, jointly change or remove either or both of the public representatives on the Advisory Board, upon notice in accordance with Article 4.6(c);
- (f) In the event of any vacancy or vacancies, the Advisory Board may conduct its business with such members as have been appointed;
- (g) The Advisory Board shall establish procedural rules and by-laws that are not inconsistent with the purposes and principles of this Agreement;
- (h) Terms of appointment and selection of officials and similar matters such as remuneration and conflict of interest shall be governed by the Advisory Board's by-laws;
- (i) No representative shall be deemed to be in a conflict of interest in representing the general interest of the Party or government that appointed that representative;

- (j) The Advisory Board shall have an annual audit of its accounts done and shall provide a copy of the audit report to the Parties and to the Government of Nunavut. The Advisory Board shall maintain its financial records in accordance with generally accepted accounting principles; and
- (k) The Advisory Board may coordinate its activities with the activities of the board established pursuant to the Socio-economic Monitoring Agreement.

4.7 ANNUAL ADVISORY BOARD REPORT

The Advisory Board shall provide an annual report of its activities and recommendations to the Parties and the Government of Nunavut. The annual report shall be made available to the public.

4.8 FUNDING

- (a) During the term of this Agreement, DDMI shall provide funding, in accordance with the Advisory Board's budget, to the Advisory Board to carry out its mandate.
- (b) DDMI will pay to the Advisory Board the full amount of its contribution to the budget for a 12-month period sixty (60) days prior to the commencement of the period or, in the case of the first budget, within thirty (30) days following the establishment of the Advisory Board.
- (c) The Advisory Board shall manage and conduct its affairs in a fiscally prudent, reasonable and cost-effective manner and shall to that end endeavour wherever possible to reduce the cost of fulfilling its responsibilities hereunder including by: making full use of information, data and resources that may be available from DDMI or public sources; avoiding the duplication of monitoring and other activities being conducted by DDMI or governmental agencies or departments; and co-ordinating its activities with those of the board established pursuant to the Socio-economic Monitoring Agreement, including sharing office space and administrative and secretarial functions where practicable.
- (d) The Advisory Board's annual budget for each of the first two years after its establishment shall be \$800,000. DDMI, Canada, and the GNWT shall contribute respectively, \$600,000, \$150,000, and \$50,000 of that amount. The first two years' budget contains start-up costs that are non-recurring and accordingly shall not be considered a base amount for future years. Thereafter, Canada and the GNWT shall have no obligation to provide funding for future years to the Advisory Board.

- (e) After the first two years, the Advisory Board's budget will be for two year periods, unless the Advisory Board and DDMI agree on a shorter or longer period. The Advisory Board's budget for a period shall be determined as follows:
- (i) At least 180 days before the expiry of the then current budget period, the Advisory Board shall prepare a recommended budget for the next budget period, based on a plan of anticipated work for that period and a review of past work and financial experience;
 - (ii) The Advisory Board shall make best efforts to ensure that the amount of DDMI's contribution to the budget for any two year period shall not, without the agreement of DDMI, exceed DDMI's contribution to the budget for the preceding two year period by a percentage which is greater than the percentage change in the Consumer Price Index published by Statistics Canada over that two year period. For this purpose, the budget for the second year shall be considered \$600,000.
 - (iii) DDMI and the Advisory Board shall jointly review the plan of anticipated work and the recommended budget, and shall attempt to agree on a budget for the period;
 - (iv) In the event that DDMI and the Advisory Board cannot agree on the budget within sixty (60) days following the initiation of the joint review under Article 4.8 (e)(iii), they shall forthwith confer with the Minister and each of them will submit to the Minister a proposed budget; and
 - (v) If DDMI, the Minister, and the Advisory Board cannot within thirty (30) days following the initiation of the process under Article 4.8(e)(iv), agree on a budget for a period, the Minister shall forthwith select either the budget submitted by DDMI or, provided the Minister is reasonably satisfied that the Advisory Board has complied with Article 4.8(e)(ii), the budget submitted by the Advisory Board, and the budget so selected by the Minister shall be the budget for the next two year period.
- (f) In addition to the budget, DDMI may provide additional funding to the Advisory Board for research and monitoring activities or unforeseen circumstances, based on proposals submitted to DDMI by the Advisory Board for which funding is not available in the budget. DDMI shall in good faith review and consider proposals submitted by the Advisory Board for additional funding and shall provide written reasons to the Advisory Board and Canada if any request for funding is not accepted by DDMI. If requested by the Advisory Board or DDMI, the Minister

shall review the matter and provide the Advisory Board and DDMI with his/her views on how this matter might be resolved and shall make public those views.

- (g) Any funds provided by DDMI, Canada, or GNWT in a budget period that are not expended in that period shall be applied to fund the costs of the Advisory Board in accordance with the budget for the succeeding budget period, provided that funds that are designated for a program that continues into a new budget period may be used for that program.

4.9 ADMINISTRATION, TRADITIONAL KNOWLEDGE AND SCIENTIFIC SUPPORT

- (a) The Advisory Board may establish a secretariat to support it in its activities.
- (b) The Advisory Board may from time to time establish two panels of experts as follows:
 - (i) One panel to assist in the application and consideration of traditional knowledge; and
 - (ii) One panel to assist in the application and consideration of other types of scientific knowledge.
- (c) Each panel shall act on specific instruction from the Advisory Board to assist it in carrying out the Advisory Board's mandate.
- (d) The panels of experts may, both separately and jointly, meet, prepare reports and meet with the Advisory Board from time to time.
- (d) Scientific and traditional knowledge obtained through the operation or activities of the Advisory Board shall be considered public information. In the case of traditional knowledge, the agreement of the Aboriginal Peoples providing the traditional knowledge shall be necessary before the information is made public.

4.10 INFORMATION AND CO-OPERATION

Each of the Parties shall co-operate with the Advisory Board and provide the Advisory Board in a timely fashion with such information and assistance requested by the Advisory Board that such Parties are reasonably able to provide and which is required for the Advisory Board to carry out its mandate.

4.11 TRANSITIONAL

The Parties shall review this Article IV two years after the Effective Date of this Agreement. Taking into account the results of the regional cumulative effects assessment and management framework initiative referred to in Article IX and the experience of other advisory environmental boards, including the BHP Independent Environmental Monitoring Agency, the Parties may negotiate to amend the provisions of this Article IV. DDMI shall not, as a result of such negotiations, be required to provide, in relation to the Project, any funding in excess of its funding obligations specified in Article 4.8.

ARTICLE V

ENVIRONMENTAL COMPLIANCE

5.1 COMPLIANCE

DDMI shall carry out the Project in compliance with all environmental laws and regulations and Regulatory Instruments applicable to the Project including, without limitation, the following:

- (a) the Water Licence;
- (b) Authorization(s) issued under Section 35 of the *Fisheries Act*;
- (c) Explosives Factory Licences issued under the *Explosives Act*;
- (d) the Land Leases;
- (e) Navigable Waters Permits issued under the *Navigable Waters Protection Act*; and
- (f) Any and all additional Regulatory Instruments applicable to the Project at any time.

5.2 In carrying out the Project, DDMI shall comply with this Agreement and all Environmental Plans and Programs submitted and reviewed in accordance with this Agreement.

5.3 DDMI shall take prompt and appropriate corrective action to remedy any non-compliance with Article 5.1 or Article 5.2.

5.4 CONFIRMING COMPLIANCE

- (a) The Minister may direct, on his or her own initiative or at the request of the Advisory Board, any qualified person to conduct investigations to confirm compliance with Article 5.2 of this Agreement.
- (b) DDMI shall admit the qualified person to the Project and shall provide the qualified person with all reasonable assistance.
- (c) The Minister will take all reasonable efforts to co-ordinate investigations under this Agreement with inspections under the Regulatory Instruments.
- (d) The qualified person shall prepare a report of his or her investigations for the Minister and the Advisory Board.

ARTICLE VI

ENVIRONMENTAL MANAGEMENT PLANS

6.1 PROVISION OF ENVIRONMENTAL MANAGEMENT PLANS

Construction Phase(s)

DDMI has provided the Parties and the Government of Nunavut, and will provide the Advisory Board (when established), with copies of its Environmental Management Plans for the Construction Phase(s) of the Project. The Environmental Management Plans contain specific and comprehensive plans to deal with environmental matters of particular concern during construction of the Project. DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board with any and all amendments and revisions to the Environmental Management Plans as and when such amendments or revisions are made.

Operating Phase

Not later than six months before the commencement of Commercial Production from the Project, DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board with updated copies of its Environmental Management Plans for the operating phase of the Project. The Environmental Management Plans shall contain specific and comprehensive plans to deal with environmental matters of particular concern during

operation of the Project. Thereafter DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board with any and all amendments and revisions to the Environmental Management Plans as and when such amendments or revisions are made. DDMI shall consider technological advances as factors in the development of Environmental Management Plans during operations. In order to effectively incorporate the traditional knowledge of Aboriginal Peoples in its Environmental Plans and Programs, DDMI shall undertake or fund such traditional knowledge studies as a Party can reasonably demonstrate are necessary and relevant, do not duplicate existing studies, and can be carried out at reasonable cost. Where applicable, traditional knowledge shall be considered fully along with scientific knowledge in developing, reviewing and amending the Environmental Management Plans.

Closure Phase

Not later than three years before planned closure activities are scheduled to occur, DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board with current copies of its Environmental Management Plans for the Closure and Post Closure phase(s) of the Project. Thereafter DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board with any and all amendments and revisions to the Environmental Management Plans as and when such amendments or revisions are made.

6.2 ENVIRONMENTAL MANAGEMENT PLANS

(DDMI shall undertake environmental management of the Project through the implementation of Environmental Management Plans. The Environmental Management Plans shall, where applicable, include the following specific and comprehensive plans designed as part of a program of adaptive environmental management:

- (a) Waste Management Plan;
- (b) Water Management Plan;
- (c) Hazardous Materials Management Plan;
- (d) Blasting/Explosives Management Plan;
- (e) Quarry Management Plan;
- (f) Emergency Response Plan;
- (g) Processed Kimberlite Containment Management Plan;
- (h) Country Rock and Till Storage Management Plan;
- (i) Dredged Lakebed Sediment Management Plan;
- (j) Reclamation and Abandonment Plan(s) (including Initial, Interim and Final Plans);
- (k) Biotite Schist Management Plan;
- (l) Exploration Environmental Management Plan;

- (m) Traffic Management Procedures;
- (n) Fish Habitat Management Plan;
- (o) Construction Area and Activity Management Plan;
- (p) Operations Area and Activity Management Plan; and
- (q) Wildlife Management Related Extracts from above noted plans.

The Environmental Management Plans shall include the mitigation measures outlined in DDMI's Commitments and in the conclusions of the Responsible Authorities documented in the CSR. DDMI shall adapt or revise these mitigation measures in accordance with the principles of adaptive environmental management.

DDMI shall, in the development and implementation of Environmental Plans and Programs include, where appropriate, the following:

- (a) quality control and assurance programs;
- (b) environmental awareness training for employees and contractors;
- (c) regular briefings on environmental matters to on-site supervisors; and
- (d) detailed adaptive environmental mitigation measures.

6.3 REVIEW OF ENVIRONMENTAL MANAGEMENT PLANS

- (a) In the event that, at any time, the Minister on his/her own initiative, or in response to a request from any Party or the Advisory Board and after Consultation with DDMI, determines that an Environmental Management Plan is inadequate or incomplete, the Minister may provide DDMI with a Minister's Report and DDMI shall forthwith, but in any event within sixty (60) days of receipt of the Minister's Report, provide:
 - (i) the Minister with revisions to the Environmental Management Plan which address to the Minister's satisfaction the deficiencies described in the Minister's Report;
 - (ii) a replacement Environmental Management Plan which addresses to the Minister's satisfaction the deficiencies described in the Minister's Report; or

- (iii) specific replies to the deficiencies described in the Minister's Report and DDMI's detailed explanation, to the Minister's satisfaction, as to why, in DDMI's view, the Environmental Management Plan need not be revised or replaced to deal with the deficiencies outlined in the Minister's Report.
- (b) In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide DDMI with a Minister's Report pursuant to Article 6.3 (a) when the Minister receives a request from the GNWT pursuant to that Article and the GNWT's request shall be included in the Minister's Report.
- (c) The Minister may provide DDMI with an extension of time where DDMI is bona fide delayed in complying with this Article.

ARTICLE VII

ENVIRONMENTAL MONITORING PROGRAMS

7.1 PROVISION OF ENVIRONMENTAL MONITORING PROGRAMS

DDMI shall undertake compliance and environmental effects monitoring of the Project through the Environmental Monitoring Programs. DDMI shall provide the Parties, the Government of Nunavut, and the Advisory Board (when established) with copies of its Environmental Monitoring Programs. The Environmental Monitoring Programs contemplated by this Article shall be reviewed in accordance with Article 7.5 of this Agreement. The Environmental Monitoring Programs shall be revised on an ongoing basis as necessary and where appropriate in response to changing circumstances and additional information.

The Environmental Monitoring Programs shall include activities designed to:

- (a) meet the monitoring requirements of all Regulatory Instruments;
- (b) verify the accuracy of the environmental assessment of the Project;
- (c) determine the effectiveness of measures taken to mitigate any adverse environmental effects of the Project;
- (d) consider traditional knowledge;
- (e) establish or confirm thresholds or early warning signs;
- (f) trigger action by adaptive mitigation measures where appropriate;
- (g) provide opportunities for the involvement or active participation of each of the Aboriginal Peoples in the implementation of the monitoring programs; and
- (h) provide training opportunities for each of the Aboriginal Peoples.

7.2 ENVIRONMENTAL MONITORING COMPONENTS

The Environmental Monitoring Programs shall include, but not necessarily be limited to, the following programs:

- (a) An Environmental Air Quality Monitoring Program;
- (b) A Wildlife/Vegetation Monitoring Program;
- (c) An Aquatic Effects Monitoring Program;
- (d) A Geotechnical Monitoring Program;
- (e) An Operational Health and Safety Program (limited to effects on human health resulting from environmental changes); and
- (f) Other specific environmental monitoring programs as required under territorial or federal legislation or as required in the CSR.

7.3 The Environmental Monitoring Programs will include the identification of monitoring objectives and the monitoring programs outlined in DDMI's Commitments and in the conclusions of the Responsible Authorities documented in the CSR. DDMI shall adapt or revise the Environmental Monitoring Programs in accordance with the principles of adaptive environmental management.

7.4 MONITORING DATA AND RESULTS

- (a) DDMI shall deliver monitoring data and information to the Parties, the Government of Nunavut, and the Advisory Board in time-frames and in formats developed in Consultation with the Advisory Board.
- (b) The formats for submission of monitoring program results and analysis shall not be inconsistent with reporting requirements established under legislation, regulations and Regulatory Instruments and the requirements of such legislation, regulations and Regulatory Instruments shall apply to the extent of any inconsistency.
- (c) Reporting dates will be established to conform with the requirements of the appropriate Regulatory Instruments.
- (d) DDMI shall carry out the monitoring in a manner which will provide data consistent with any cumulative effects monitoring programs and shall Consult and co-operate with the regulatory agencies undertaking such programs, as appropriate.

7.5 REVIEW OF ENVIRONMENTAL MONITORING PROGRAMS

- (a) In the event that, at any time, the Minister, on his/her own initiative, or in response to a request of any Party or the Advisory Board, and after Consultation with DDMI, determines that an Environmental Monitoring Program is inadequate or incomplete, including with respect to a matter under Article 7.4, the Minister may provide DDMI with a Minister's Report and DDMI shall forthwith, but in any event within sixty (60) days of receipt of the Minister's Report, provide:
- (i) the Minister with revisions to the Environmental Monitoring Program which address to the Minister's satisfaction the deficiencies described in the Minister's Report;
 - (ii) a replacement Environmental Monitoring Program which addresses to the Minister's satisfaction the deficiencies described in the Minister's Report;
or
 - (iii) specific replies to the deficiencies described in the Minister's Report and DDMI's detailed explanation, to the Minister's satisfaction, as to why, in DDMI's view, the Environmental Monitoring Program need not be revised or replaced to deal with the deficiencies outlined in the Minister's Report.
- (b) In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide DDMI with a Minister's Report pursuant to Article 7.5(a) when the Minister receives a request from the GNWT pursuant to that Article and the GNWT's request shall be included in the Minister's Report.
- (c) The Minister may provide DDMI with an extension of time where DDMI is bona fide delayed in complying with this section.

7.6 ABORIGINAL COMMUNITY INVOLVEMENT

In addition to the participation of Aboriginal Peoples in the review of Environmental Management Plans and Environmental Monitoring Programs through participation on the Advisory Board and its activities, and the resulting capacity building, DDMI shall use its best efforts to:

- (a) provide for the involvement of members of each of the Aboriginal Peoples in Environmental Monitoring Program design and implementation;

- (b) give priority to members of each of the Aboriginal Peoples in the provision of training and employment in relation to environmental monitoring in accordance with the provisions of the Socio-economic Monitoring Agreement; and
- (c) provide technical training opportunities for youth of each of the Aboriginal Peoples.

ARTICLE VIII

SOCIO-ECONOMIC EFFECTS RESULTING FROM ENVIRONMENTAL CHANGE

- 8.1 DDMI shall comply with all requirements of the CSR relating to monitoring and mitigation of potential socio-economic effects resulting from environmental changes.

ARTICLE IX

REGIONAL CUMULATIVE EFFECTS ASSESSMENT & MANAGEMENT FRAMEWORK

- 9.1 DDMI will participate in the initiative announced by the Minister of the Environment on November 3, 1999 to develop a regional cumulative effects assessment and management framework. This framework is to consider both scientific and traditional knowledge, and be used in conjunction with adaptive management to ensure sustainable development.

ARTICLE X

RECLAMATION AND ABANDONMENT

10.1 RECLAMATION AND ABANDONMENT

- (a) DDMI shall submit Reclamation and Abandonment Plan(s) as and when required pursuant to the *Northwest Territories Waters Act*, the *Mackenzie Valley Resource Management Act*, and the *Territorial Lands Act*;
- (b) The Parties acknowledge that the Reclamation and Abandonment Plan(s) will evolve over time during the life of the Project as part of the process of adaptive environmental management and through the incorporation of new and emerging technologies;

- (c) The final Project will be abandoned using the most current technology reasonably practicable; and
- (d) DDMI will implement progressive reclamation and abandonment of the Project in a manner consistent with sustainable development.

ARTICLE XI

ARCHAEOLOGICAL SITES

11.1 PROTECTION OF KNOWN SITES

DDMI shall establish, after Consultation with the Aboriginal Peoples and the appropriate government agencies, including the Prince of Wales Northern Heritage Centre, appropriate protection of the Archaeological Sites in the vicinity of the Project, in accordance with applicable laws and regulations, to minimize the impacts on Archaeological Sites.

11.2 ARCHAEOLOGICAL SURVEYS

- (a) In the continuing exploration and development of the Project, DDMI shall conduct Archaeological surveys to meet the prevailing standards of the day and respecting places of significance to Aboriginal Peoples.
- (b) Archaeological surveys shall to the greatest extent possible, be designed and, where possible, implemented in partnership with the Aboriginal Peoples and Affected Communities or if not possible, in Consultation with the Aboriginal Peoples and Affected Communities.
- (c) DDMI shall Consult with Aboriginal Peoples and Affected Communities to ensure that traditional knowledge is incorporated into the archaeological surveys and to ensure that burial sites are identified.
- (d) In the event that an Archaeological Site is discovered in carrying out the Project, DDMI shall immediately notify the Minister, the GNWT and Aboriginal Peoples of the presence of the Archaeological Site and, subject to Article 11.2(e), DDMI shall take all reasonable steps necessary to protect the Archaeological Site.

- (e) In conducting archaeological surveys and in the event that it becomes necessary to disturb the Archaeological Site and collect the artifacts, DDMI shall Consult with Aboriginal Peoples and obtain all necessary authorizations and comply with all applicable laws.

ARTICLE XII

ANNUAL REPORTS

12.1 ANNUAL REPORT

- (a) DDMI shall prepare and submit an annual report (the "Annual Report") to the Parties, the Government of Nunavut, and the Advisory Board on March 31, (or on such other date as prescribed by the Minister from time to time), for each calendar year during the term of this Agreement, commencing March 31, 2001.
- (b) Each Annual Report shall include the results of Environmental Monitoring Programs, and a rolling summary and analysis of environmental effects data over the life of the Project to illustrate any trends. The actual performance of the Project shall be compared to the results predicted in the environmental assessment and the CSR and an evaluation provided as to how DDMI's adaptive environmental management has performed to the date of each Annual Report.
- (c) Each Annual Report shall include, but not be limited to, the following:
 - (i) a comprehensive summary of all supporting information, data and results from the Environmental Monitoring Programs and all studies and research;
 - (ii) a comprehensive summary of all compliance reports required by the Regulatory Instruments;
 - (iii) a comprehensive summary of operational activities during the preceding year;
 - (iv) actions taken or planned to address effects or compliance problems which are set out in the Annual Report;
 - (v) a comprehensive summary of operational activities for the next year;
 - (vi) lists and abstracts of all Environmental Plans and Programs;
 - (vii) verification of accuracy of environmental assessments;
 - (viii) determination of effectiveness of mitigative measures;
 - (ix) a comprehensive summary of all adaptive management measures taken;
 - (x) a comprehensive summary of public concerns and responses to public concerns;

- (xi) a comprehensive summary of the new technologies investigated;
 - (xii) the Minister's comments, including any Minister's Report, on the previous Annual Report; and
 - (xiii) a plain English executive summary and translations into Dogrib, Chipewyan, and Innuinaqtun using appropriate media.
- (d) In order to prepare each Annual Report and with a view to both ensuring that an opportunity is provided for early disclosure and discussion of problems and that each Annual Report meets with the requirements of this Agreement, DDMI shall Consult with the Minister and the Advisory Board as DDMI compiles the information and data to be included in such Annual Report.
- (e) Within forty-five (45) days of the receipt of the Annual Report, any Party or the Advisory Board may advise the Minister whether such Annual Report is satisfactory or unsatisfactory.
- (f) Within ninety (90) days of the receipt by the Minister of the Annual Report, the Minister shall advise DDMI whether such Annual Report is satisfactory or whether the Minister has determined that such Annual Report is deficient. In the event that the Minister has determined the Annual Report to be deficient, the Minister shall provide DDMI with a Minister's Report.
- (g) In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall provide DDMI with a Minister's Report pursuant to Article 12.1(f) when the Minister receives advice from the GNWT that the Annual Report is unsatisfactory and the GNWT's advice shall be included in the Minister's Report.
- (h) Within sixty (60) days of the receipt by DDMI of a Minister's Report, DDMI shall reply to the Minister's Report and provide the Minister with a revised Annual Report or an addendum which addresses satisfactorily the deficiencies described in the Minister's Report.
- (i) The Minister may provide DDMI with an extension of time where DDMI is bona fide delayed in completing an Annual Report or providing a reply to a Minister's Report.

ARTICLE XIII

REGULATORY AUTHORITY

13.1 PARAMOUNTCY

In the event that any provisions of this Agreement are in conflict with or inconsistent with any legislation or Regulatory Instrument with respect to the Project, the terms of such legislation or Regulatory Instrument shall prevail over any of the terms of this Agreement to the extent of the conflict or inconsistency.

13.2 NON-DUPLICATION

The Parties to this Agreement acknowledge that it is not the intention of this Agreement to cause any duplication with the requirements of any Regulatory Instrument. In the event that any provisions of this Agreement duplicate the requirements of any Regulatory Instrument, satisfaction of the requirements of the Regulatory Instrument shall be accepted as compliance with the requirements of this Agreement.

13.3 EXERCISE OF STATUTORY DUTIES

Nothing in this Agreement shall be construed as limiting the Minister or any other regulatory authority in the exercise of statutory powers and duties.

ARTICLE XIV

COMMUNICATION AND PUBLIC ACCESS TO INFORMATION

14.1 GENERAL COMMUNICATIONS PRINCIPLES

- (a) The Advisory Board shall ensure that a timely, responsive, pro-active and cooperative approach to communication and exchange of information among the Parties, between the Advisory Board and the Parties, and between the Advisory Board and the Affected Communities is in place at all times.
- (b) The Parties shall remain respectful of the functions and responsibilities of each other in the conduct of their duties.
- (c) The Parties shall provide to the Advisory Board adequate copies of all information (including data, studies, reports and other material) they generate for another body, or the public, which relates to this Agreement and is non-proprietary.

- (d) The Parties shall take reasonable steps to provide access for the public and Affected Communities to all plans, programs, reports and other documents referred to in this Agreement.
- (e) DDMI in Consultation with the Advisory Board shall make each Annual Report available to the public and shall arrange for public meetings to review and discuss each Annual Report.
- (f) The Parties' obligations under this Agreement to collect or provide information and documentary materials are subject to any applicable legislation regarding access to information or privacy.

14.2 COMMUNICATION PLAN

The Advisory Board shall develop a Communication Plan. The Communication Plan shall ensure timely, effective, efficient and consistent communication of information related to the environmental management of the Project.

14.3 PUBLIC REGISTRY

The Advisory Board shall maintain a public registry and a listing of all materials placed on the public registry. All written correspondence, reports, or other materials received by the Advisory Board that relate to this Agreement shall be placed on the public registry in the Advisory Board's office and shall be made available to the public.

ARTICLE XV

SECURITY AND ENFORCEMENT

15.1 SECURITY

The Security Deposit, the ~~EA Security Deposit~~ and the Additional Security Deposit shall be held by the Minister as security for the performance by DDMI of its reclamation and abandonment obligations under the Water Licence and Land Leases, any other obligations of DDMI under environmental laws and regulations or under any other Regulatory Instruments for which the Minister is responsible, and any other obligations of DDMI under this Agreement, on and subject to the terms and conditions of this Article XV.

*included
of which
each is*

- (a) Within ³⁰~~20~~ days of the Effective Date of this Agreement, DDMI shall provide to the Minister a security deposit, in the amount of ~~\$15,000,000~~.

30 ← no immediate liability

- (b) On March 31, 2001 and annually on March 31 thereafter, DDMI shall provide the Minister with additional security so that the amount of security deposited with the Minister shall equal the amount specified for that particular year in Column A in Schedule 1 as adjusted pursuant to Articles 15.1(g), 15.1(h) and 15.1(i). The \$15,000,000 amount deposited pursuant to Article 15.1(a) together with such additional amounts deposited under this Article 15.1(b) shall hereinafter be referred to as the "Security Deposit".
- (c) Column A of Schedule 1 is the estimated cost of DDMI undertaking the reclamation and abandonment of the Project should abandonment take place in any particular year. As of the Effective Date, Column A of Schedule I is the estimated projected cost of restoration and abandonment for the Project as prepared for DDMI by an independent professional engineer with recognized expertise in this area.
- (d) In addition to the Security Deposit, on March 31, 2003 and annually on March 31 thereafter, DDMI shall provide to the Minister additional security so that the aggregate amount of additional security deposited with the Minister shall equal the amount specified for that particular year in Column B of Schedule 1. Such aggregate amount of additional security is hereinafter referred to as the "Additional Security Deposit". Where the Additional Security Deposit held by the Minister on March 31 of any year exceeds the amount specified in Column B of Schedule 1 for that year, the Minister shall refund to DDMI any excess. The Additional Security Deposit includes security for the incremental costs which Canada will incur if it has to conduct reclamation and abandonment of the Project due to a default by DDMI, contingencies, potential for increases in environmental liabilities related to variations in Project configuration and operations which may occur over the life of the Project, and defaults under this Agreement not related to reclamation and abandonment. At the fifth anniversary of the Effective Date and at five-year intervals thereafter, the Minister at his or her sole discretion may adjust the Additional Security Deposit by an amount not to exceed the average change in the Consumer Price Index over the five-year interval. DDMI may at any time request that the Minister review the amount of the Additional Security Deposit. Upon receiving such a request the Minister shall review the amount of the Additional Security Deposit and may, in his/her sole discretion, acting in a commercially reasonable manner and in the public interest, reduce the amount of the Additional Security Deposit that DDMI is required to provide to the Minister. In making determinations under this Article 15.1(d), the Minister will take into account the extent to which the development and operations of the Project have reduced the need for the Minister to hold additional security for contingencies and for the

Enclosure

potential for increases in environmental liabilities related to variations in Project configuration and operations, as well as the principle that there should be no duplication between the security for costs and contingencies which DDMI provides by way of the Security Deposit and the security which it provides for costs and contingencies by way of the Additional Security Deposit. The Minister will provide DDMI and the Advisory Board with reasons for all his/her decisions made pursuant to this Article 15.1(d).

- OK
- (e) The Security Deposit and the Additional Security Deposit shall be maintained throughout the term of this Agreement. In the event that all or any portion of the Security Deposit or the Additional Security Deposit is used by the Minister pursuant to Article 15.3 of this Agreement, DDMI shall, unless otherwise directed by the Minister, within thirty days of demand by the Minister showing particulars of use reimburse to the Minister the amount so used so that the amounts of the Security Deposit and the Additional Security Deposit are at all times equal, respectively, to the amounts required to be maintained pursuant to Article 15.1(b), subject to adjustment as provided in Articles 15.1(g), 15.1(h) and 15.1(i), and Article 15.1(d).

- credits to Land & Water will not affect Additional Security
- (f) The amount of each security deposit which DDMI posts with the Minister pursuant to the Land Leases or the Water Licence shall be credited first against the Security Deposit and then against the Additional Security Deposit provided that any credit against the Additional Security Deposit shall not exceed 67% of the Additional Security Deposit. For greater certainty, a credit will not reduce either the quantum of the Security Deposit required by Article 15.1(b) or the quantum of the Additional Security Deposit required by Article 15.1(d), but rather will be an amount that is deemed to have been provided as required. Also for greater certainty, if the security posted under the Water Licence or the Land Leases is reduced, then: the credit given under this Article 15.1(f) shall decrease by an amount which corresponds to the reduction; and DDMI shall provide without delay an addition to the Security Deposit, and/or an addition to the Additional Security Deposit, to fully offset the decrease in the credit.

- (g) As provided for in Article X of this Agreement, DDMI is required to undertake progressive reclamation and abandonment of the Project in accordance with the principles of sustainable development.

- Not required
- (i) Column C of Schedule 1 sets out DDMI's projected cumulative expenditures on progressive reclamation work that it will undertake over the life of the Project.

(ii) Prior to January 31, 2005 and prior to January 31 of each year thereafter, DDMI may deliver to the Minister and the Advisory Board a report detailing the progressive reclamation work undertaken by or for DDMI during the previous calendar year(s), the costs incurred in undertaking this progressive reclamation work and a revised estimate of the cost of DDMI undertaking the reclamation and abandonment over the remaining life of the Project, taking into account this progressive reclamation, certified by an independent professional engineer with recognized expertise in this area. By March 31 of the same year, the Minister will review the report and determine the extent to which the progressive reclamation work has reduced the estimated cost of DDMI undertaking the reclamation and abandonment over the remaining life of the Project and the extent to which the estimate contained in the report accurately reflects the revised costs of DDMI undertaking the remaining reclamation and abandonment of the Project. To the extent the Minister is satisfied that the progressive reclamation work undertaken by DDMI has reduced the estimated costs of reclamation and abandonment remaining over the life of the Project, the Minister shall make a determination to that effect and provide a copy to DDMI and the Advisory Board. The amount of the Security Deposit which DDMI must provide to the Minister on March 31 of that year and subsequent years shall be reduced so that it is equal to the revised estimated costs of DDMI undertaking the reclamation and abandonment over the remaining life of the Project, as accepted by the Minister and Column A of Schedule I shall be adjusted accordingly. Where the amount of the Security Deposit which DDMI has provided to the Minister exceeds the estimated cost of DDMI undertaking reclamation and abandonment over the life of the Project on any March 31 date, as accepted by the Minister, the Minister shall refund to DDMI any such excess, subject to applicable legislation.

Not required

(h) At any time after the second anniversary of the Effective Date of this Agreement, DDMI may deliver to the Minister and the Advisory Board a report detailing a revised estimate of the cost of DDMI undertaking the reclamation and abandonment over the remaining life of the Project, taking into account changes to the Project, ~~and any other relevant factors not considered in Article 15.1(g) above,~~ prepared by an independent professional engineer with recognized expertise in this area. Within ninety days of receipt of the report, the Minister will review the report and determine the extent to which this revised estimate accurately reflects the costs of DDMI undertaking the remaining reclamation and abandonment of the Project. To the extent the Minister is satisfied that this estimate accurately reflects the costs of DDMI undertaking the remaining reclamation and abandonment of the Project, the Minister shall make a determination to that effect and will provide a copy to

*Changes to contract
Minister will*

*Drafts around
concepts of (h) & (i)
Co. will suggest that is any
timelines for
doing a
preliminary
report*

DDMI and the Advisory Board. The amount of the Security Deposit which DDMI must provide to the Minister on the next March 31, and March 31 of subsequent years shall be reduced so that it is equal to the revised estimated costs of DDMI undertaking the reclamation and abandonment over the remaining life of the Project, as accepted by the Minister and Column A of Schedule I will be amended to reflect the Minister's determination. Where the amount the Security Deposit which DDMI has provided to the Minister exceeds the estimated cost of DDMI undertaking reclamation and abandonment over the life of the Project on any March 31 date, as accepted by the Minister, the Minister shall refund to DDMI any such excess subject to applicable legislation.

(i) At any time after the second anniversary date of the Effective Date of this Agreement, the Minister may notify DDMI and the Advisory Board that he/she intends to seek a report containing an updated estimate of the cost of reclamation and abandonment for the Project prepared by an independent professional engineer with recognized expertise in this area. ~~DDMI shall be offered a reasonable opportunity to provide comments to the Minister on the scope of such a report.~~ When any such report is then available, the Minister shall provide a copy to DDMI and the Advisory Board and will again provide to DDMI a reasonable opportunity to provide comments on the report. To the extent that the Minister determines that he/she does accept the updated estimates of the costs of reclamation and abandonment over the remaining life of the Project, and should such estimated costs of reclamation and abandonment to the extent accepted by the Minister as at that time be greater than the amount of the Security Deposit, DDMI shall provide the Minister with an additional amount of security so that the amount of the Security Deposit required as at that time is equal to the estimated costs of reclamation and abandonment as at that time, such additional security to be provided to the Minister within 60 days of a demand by the Minister to do so, and Column A of Schedule I will be amended to reflect the Minister's determination.

(j) The reviews of the Security Deposit contemplated in Articles 15.1(g), 15.1(h) and 15.1(i) shall, to the extent practicable, be co-ordinated with the reviews of security posted pursuant to the Land Leases and/or the Water Licences. In addition, where there has been a reduction in the amount of the security under either the Water Licence or the Land Leases, the Minister shall, at the request of DDMI, review the amount of the Security Deposit to determine if the Security Deposit should be adjusted, giving serious consideration to the rationale for any such reduction in the amount of security posted under the Water Licence and Land Leases.

- Integrated*
- (k) In addition to the Security Deposit and the Additional Security Deposit, as security for the performance of its obligations under this Agreement, DDMI shall provide to the Minister within 90 days of the signing of this Agreement, and shall at all times maintain with the Minister, a security deposit (the "EA Security Deposit") in a form satisfactory to the Minister and on terms satisfactory to the Minister in the amount of \$3,000,000. At the fifth anniversary of the Effective Date and at five-year intervals thereafter, the Minister at his or her sole discretion may adjust the EA Security by an amount not to exceed the average change in the Consumer Price Index over the five-year interval. In the event that all or any portion of the EA Security Deposit is used by the Minister pursuant to Article 15.3 to cure a default under this Agreement, DDMI shall within thirty days of demand by the Minister showing particulars of use reimburse to the Minister the amount so used so that the aggregate amount of the EA Security Deposit shall at all times equal \$3,000,000 subject to adjustment as herein provided.
- (l) The Security Deposit, the EA Security Deposit and at least sixty-seven percent (67%) of the Additional Security Deposit shall be provided in the form of: cash; an irrevocable unconditional letter of credit; an amount held in a Qualifying Environmental Trust established through an indenture that has been approved by the Minister; any other form of security proposed by DDMI and satisfactory to the Minister; or any combination of the foregoing. Up to thirty-three percent (33%) of the Additional Security Deposit need not be provided in the form of: cash; an irrevocable unconditional letter of credit; an amount held in a Qualifying Environmental Trust established through an indenture that has been approved by the Minister; or any combination of the foregoing, but may be provided in the form of: an irrevocable guarantee; insurance; or any other form of security proposed by DDMI; or any combination of the foregoing, provided that the Additional Security Deposit is in a form(s) satisfactory to the Minister.
- (m) If the Security Deposit, the Additional Security Deposit or the EA Security Deposit is composed in whole or in part of cash, how it is invested and how interest which may be earned thereon will be allocated, shall be determined by the Minister and DDMI in the terms of the applicable security instrument(s). The terms on which the Security Deposit, the Additional Security Deposit or the EA Security Deposit will be delivered to and held by the Minister, if the Security Deposit, the Additional Security Deposit or the EA Security Deposit is not wholly in the form of cash, shall be consistent with the terms of this Agreement and be determined by the Minister and DDMI in the applicable security instrument(s).

*and obligation
under this
agreement*

- (n) Once DDMI has completed the reclamation and abandonment of the project to the satisfaction of the Minister, the Minister shall return to DDMI any unused portion of the Security Deposit, the EA Security Deposit and of the Additional Security Deposit less any amounts related to ongoing monitoring and maintenance of the Project, if and to the extent required by this Agreement. The Minister's obligation to return any unused portion of the Additional Security Deposit shall include taking appropriate steps to terminate, cancel or release guarantees, insurance or like assurances comprised in the Additional Security Deposit.
- (o) Schedule 1 shall form part of this Agreement and shall be deemed to be amended from time to time to incorporate changes made to it pursuant to this Article 15.1.

15.2 GNWT JURISDICTION

- (a) The Minister shall provide DDMI with a Notice of Default, in accordance and compliance with the process in Article 15.3, when the Minister is notified in writing by the GNWT that, in the opinion of the GNWT DDMI has not performed ~~any of its~~ obligations under this Agreement with respect to a matter substantially within the jurisdiction of the GNWT. *an*
- (b) In relation to matters substantially within the jurisdiction of the GNWT, the Minister shall, within 30 days after the Minister has drawn funds on the Security Deposit, the EA Security Deposit or the Additional Security Deposit in accordance with Article 15.3(a)(iii) or Article 15.3(a)(iv), pay to the GNWT from the funds so drawn reimbursement of all reasonable costs expended by the GNWT in rectifying non-compliance by DDMI under Article V.

15.3 EVENTS OF DEFAULT AND REMEDIES

- (a) (i) Subject to Articles 15.3(b) and 15.3(d), in the event that in the opinion of the Minister DDMI has not performed any of its obligations under this Agreement, the Minister will advise DDMI, specifying the failure, and DDMI will have a reasonable period determined by the Minister in his/her discretion in which to either explain to the Minister's satisfaction why such failure has not occurred, or commence to carry out, and thereafter diligently continue to carry out, all required steps to remedy the failure and to prevent its recurrence.

- (ii) If, within the determined period, DDMI fails to explain to the Minister's satisfaction and fails to commence carrying out to the Minister's satisfaction all required steps to remedy the failure and to prevent its recurrence, or if DDMI, having commenced to carry out all required steps, thereafter fails to continue carrying out to the Minister's satisfaction any required step, then the Minister shall be entitled to give Notice of Default to DDMI.
 - (iii) Subject to Article 15.3(iv) below, if the default has arisen as a result of DDMI's failure to comply with any of its obligations under this Agreement, and if within 30 days, or such longer period as the Minister will grant if reasonable in his/her opinion, of receipt of such Notice of Default DDMI does not commence to carry out, and thereafter diligently continue to carry out, all required steps to remedy the failure and to prevent its recurrence, the Minister shall be entitled to draw down and use the Security Deposit, the Additional Security Deposit and the EA Security Deposit as and when required to carry out any work reasonably required to cure such default, provided that the Minister shall draw down and use the portion of the Additional Security Deposit that is described in the second sentence of Article 15.1(l) only after utilizing the security posted under the Water Licence, the Land Leases, the Security Deposit, the remainder of the Additional Security Deposit and the EA Security Deposit, to the extent available. In addition, if such default has arisen as a result of DDMI's failure to comply with its obligations under Article V or X of this Agreement, and if such default is substantial and material, and if DDMI does not commence to carry out, and thereafter diligently continue to carry out, all required steps to remedy the failure and to prevent its recurrence, the Minister shall, in addition to the right to use the Security Deposit, the Additional Security Deposit and the EA Security Deposit, be entitled to suspend the operations of the Project and/or terminate the Land Leases.
 - (iv) The Minister shall be entitled to draw down and use the EA Security Deposit, as and when required, only to remedy defaults under this Agreement except for defaults under Article 5.1.
- (b) In the case of a serious and imminent threat to the environment for which DDMI is responsible under this Agreement and in respect of which DDMI has been informed and is not taking measures satisfactory to the Minister, the Minister shall

be immediately entitled to use the Security Deposit (unless the security deposit under the Water Licence or the security deposits under the Land Leases are available for that purpose) and the Additional Security Deposit without the requirement for any demand, notice or other formality whatsoever.

- (c) In the event that DDMI fails to provide the Minister with the Security Deposit, the EA Security Deposit or the Additional Security Deposit as required by Article 15.1, fails to increase the Security Deposit or the Additional Security Deposit as required by Article 15.1 or fails to reimburse any amounts drawn on the Security Deposit, the Additional Security Deposit or the EA Security Deposit as required by this Agreement, within 30 days of the delivery to DDMI of a Notice of Default, or any such longer period as the Minister in his/her sole discretion may decide, the Minister shall be entitled to suspend the operations of the Project and/or terminate the Land Leases.
- (d) In the event that DDMI is adjudged or declared bankrupt or adjudged or declared insolvent or makes an assignment for the benefit of its creditors or petitions or makes a proposal in bankruptcy or applies to any tribunal for the appointment of a receiver or trustee for DDMI or for any substantial part of its property, or commences any proceedings, other than a Permitted Arrangement, relating to it under any reorganization, arrangement or re-adjustment of debt, dissolution or liquidation law, law enabling corporate reorganizations or statute of any jurisdiction whether now or hereafter in effect relating to or governing debtors, or by any act indicates its consent to, approval of, or acquiescence in, any such proceeding for DDMI or any part of its property, or suffers the appointment of any receiver or trustee or administrative receiver, DDMI shall, absent a declaration to the contrary by the Minister, be immediately deemed to be in default under this Agreement and the Minister shall immediately be entitled to the full amount of the Security Deposit, the Additional Security Deposit and the EA Security Deposit without the requirement for any notice or demand or other formality whatsoever provided, however, that as long as DDMI is otherwise in compliance with its obligations under this Agreement, the Water Licence, the Land Leases and any other applicable Regulatory Instruments, the Minister shall not withdraw any amounts from the Security Deposit, the EA Security Deposit and the Additional Security Deposit, it being acknowledged and agreed that the Security Deposit, the EA Security Deposit and the Additional Security Deposit shall only be used to fund performance, by or on behalf of the Minister, of said obligations in the event DDMI defaults in the performance of such obligations and, except in the case of a serious and imminent threat to the environment resulting from such default of which DDMI has been informed and in respect of which DDMI is not taking measures satisfactory to the Minister, in which case the Minister shall be immediately

entitled to use the Security Deposit, EA Security Deposit and the Additional Security Deposit as provided in Article 15.3(b), DDMI does not cure such default to the Minister's satisfaction within thirty (30) days, or such longer period as the Minister may grant if reasonable in his/her opinion, of the Minister providing DDMI with notice of such default. DDMI shall no longer be deemed to be in default under this Article 15.3(d) in the event that a plan, proposal or arrangement under the *Bankruptcy and Insolvency Act* or *Companies' Creditors Arrangement Act* or similar or analogous proceedings are approved and implemented.

'Permitted Arrangement' means an arrangement, amalgamation or winding-up under the *Canada Business Corporations Act* or any similar legislation which the Minister has consented to, such consent not to be unreasonably withheld, or which (a) would not in any way compromise, adversely affect or adversely modify the rights, ranking and priority of the claims of Her Majesty arising under this Agreement, the Water Licence, the Land Leases or any other applicable Regulatory Instruments or any security provided in connection herewith or therewith against DDMI or its assets or property it being acknowledged that a substitution, in accordance with the provisions of Article 17.6, of a new or successor corporation for DDMI that would not itself be deemed to be in default pursuant to this Article 15.3(d), will not in and of itself be an adverse modification of Her Majesty's rights, (b) would not convert or create any entitlement (whether conditional or otherwise) to conversion of any equity into indebtedness, other than indebtedness which by its terms is subordinated to the claims of Her Majesty under this Agreement and (c) would not result in the holder of any claim which, prior to such arrangement taking effect, ranked subordinate to or *pari passu* with the claims of Her Majesty arising under this Agreement, the Water Licence, the Land Leases or any other applicable Regulatory Instruments or any security provided in connection herewith or therewith acquiring a priority (or prior right or claim) over such claims of Her Majesty.

- (e) The remedies provided for hereunder are not exclusive and are not intended to replace remedial measures which are given effect pursuant to environmental legislation, regulations or under the Regulatory Instruments. For greater certainty, notwithstanding Article 15.3(a) and (b); any security taken pursuant to the Water Licence shall be used in accordance with the Northwest Territories Waters Act.
- (f) Any costs which are incurred by Canada in connection with default by DDMI under the terms of this Agreement, and which exceed the amount available under any of the security deposits, shall be recoverable from DDMI as a debt due to Her Majesty.

- (g) In using the Security Deposit, EA Security Deposit and the Additional Security Deposit to remedy defaults under this Agreement, the Minister shall be required to act in a commercially reasonable manner, and shall not remedy any default to a higher standard than would be required of DDMI.
- (h) To the extent not prohibited by law, DDMI shall have the right to audit, from time to time on reasonable notice to the Minister and at DDMI's expense, any expenditure of funds withdrawn by the Minister from the Security Deposit, EA Security Deposit or the Additional Security Deposit.

15.4 DISPUTE SETTLEMENT

Any determination by the Minister under Articles 15.1(g), 15.1(h) or 15.1(i) shall be subject to arbitration by DDMI and the Minister in accordance with the provisions of Article XVI in the event that such determination is disputed by DDMI. Any other dispute or matter arising under or with reference to this Article XV shall not be dealt with pursuant to Article XVI but shall instead be within the jurisdiction of the courts.

ARTICLE XVI

RESOLUTION OF DISPUTES

16.1 DISPUTE RESOLUTION

Subject to Article 15.4, where there is a dispute between any Parties (the "disputing parties") arising out of or in connection with this Agreement, then the disputing parties shall submit the matter to binding arbitration subject to the dispute resolution provisions set out below.

- 16.2 In the event a dispute arises, the disputing parties shall use all reasonable efforts, including mediation if the disputing parties agree, to amicably resolve the dispute within sixty (60) days, or such extended time as the disputing parties may agree, within delivery of notice in writing of a dispute from one disputing party to another.

16.3 SELECTION OF THE ARBITRATOR(S)

If the dispute is not resolved pursuant to Article 16.2, then the disputing parties shall refer the dispute to binding arbitration and the following provisions shall apply:

- (a) the dispute shall be referred to a single arbitrator if the disputing parties agree; otherwise it shall be referred to three arbitrators, one of whom shall be chosen by the Party or Parties bringing the dispute, one by the Party or Parties responding to the dispute, and the third by the two so chosen. The third arbitrator shall be the chairperson. Arbitrators shall be independent, disinterested, knowledgeable and experienced in the issue in dispute. A decision may be made by a majority of the arbitrators;
- (b) if, within sixty (60) days of being notified that a dispute has been referred to arbitration, or such extended time as the disputing parties may agree upon, a Party or Parties who have been so notified fail to appoint an arbitrator, then an application may be made to the Supreme Court of the Northwest Territories for the appointment of an arbitrator; and
- (c) if within thirty (30) days or such extended time as the disputing parties may agree upon, the first two arbitrators appointed under Article 16.3 (a) or (b) above do not agree upon the third arbitrator, then an application may be made to the Supreme Court of the Northwest Territories for the appointment of the third arbitrator.

16.4 Except as to matters otherwise provided herein, the provisions of the *Commercial Arbitration Act (Canada)* and *Commercial Arbitration Code* annexed thereto, shall apply.

16.5 The Advisory Board shall be entitled to intervene, as appropriate, in the resolution of disputes under this Agreement.

16.6 COSTS OF DISPUTE RESOLUTION

Unless the parties agree otherwise, the Parties shall bear their own costs of dispute resolution, and the costs of a mediator or an Arbitrator(s) shall be paid in equal shares by the parties to the dispute.

16.7 JURISDICTION OF THE ARBITRATOR(S)

The jurisdiction of the Arbitrator(s) is limited to issuing awards resolving disputes respecting interpretation, application or alleged breach of the terms of this Agreement, awards requiring compliance with this Agreement and awards requiring the performance of work in accordance with this Agreement. An Arbitrator(s) shall not have jurisdiction to issue any monetary awards or damages, penalties, accounting, costs or equitable remedies, except for the issuance of orders requiring the performance of work in accordance with this Agreement.

16.8 INTERLOCUTORY RELIEF

- (a) Nothing in this Article prevents a Party from commencing judicial proceedings at any time:
 - (i) to prevent a loss of a right to commence proceedings due to the expiration of a limitation period; or
 - (ii) to obtain an interim order for the protection or preservation of property that is the subject matter of the dispute;

where, for any reason, it is impossible or impractical for an Arbitrator(s) to promptly resolve the matter in dispute.

- (b) Neither the resolution of such court application nor the participation therein by any Party shall operate as a bar to arbitration, or as a waiver of any of the rights and obligations of any Party with respect to dispute resolution in accordance with the terms of this Agreement.

ARTICLE XVII

GENERAL PROVISIONS

17.1 REMEDIES NOT EXCLUSIVE

The rights and remedies of any Party under this Agreement are cumulative and in addition to, and not in substitution for, any rights, powers or remedies provided at law or in equity including, without limitation, pursuant to applicable environmental legislation. Any single or partial exercise by any Party of any right or remedy for a default or breach of any term, covenant, condition or agreement in this Agreement does not affect that Party's rights and

does not waive, alter, affect or prejudice any other right or remedy to which that Party may be entitled for the same default or breach. Any waiver by any Party of the strict observance of, performance of, or compliance with, any term, covenant, condition or agreement of this Agreement must be in writing to be effective and any waiver or indulgence by any Party shall not constitute a waiver of any other provisions, a continuing waiver or a waiver of any subsequent default.

17.2 REVIEW AND AMENDMENT OF AGREEMENT

- (a) After the fifth anniversary of the Effective Date of this Agreement and thereafter at five-year intervals, the Parties may conduct an assessment of this Agreement in Consultation with the Advisory Board.
- (b) This Agreement may be amended at any time by written agreement among the Parties.

17.3 GOVERNING LAW

This Agreement is governed by and is to be construed in accordance with the laws of the Northwest Territories, and the laws of Canada applicable therein.

17.4 FURTHER ASSURANCES

The Parties shall with reasonable diligence do all things and provide such further documents or instruments as may be reasonably necessary or desirable to give effect to this Agreement and to carry out its provisions.

17.5 SUCCESSORS AND ASSIGNS

This Agreement shall enure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

17.6 ASSIGNMENT

DDMI shall not assign this Agreement or any part of it, nor be released from its obligations or covenants under this Agreement, unless:

- (a) it is determined by Canada and the GNWT that the proposed assignee has the financial capacity and qualifications, and such other capacity and qualifications as may be required, to carry out DDMI's obligations under this Agreement;

- (b) the proposed assignee enters into an agreement in writing with Canada and the GNWT in which the assignee assumes all of DDMI's obligations and liabilities under this Agreement; and
- (c) the proposed assignee is also the assignee of DDMI's obligations under the Regulatory Instruments and the Participation Agreements.

Provided, however, that if the requirements of Articles 17.6 (a) to (c) above are satisfied, DDMI shall be released from all and any obligations under this Agreement and the Parties shall execute and deliver to DDMI documents of release reasonably requested by DDMI.

17.7 SEVERABILITY

Any provision of this Agreement which is or becomes prohibited or unenforceable in any jurisdiction shall not invalidate or impair the remaining provisions hereof, which shall be deemed severable from any such prohibited or unenforceable provision, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

17.8 MEMBER OF HOUSE OF COMMONS NOT TO BENEFIT

As required by the *Parliament of Canada Act*, it is an express condition of this Agreement that no member of the House of Commons shall be admitted to any share or part of this Agreement or to any benefit arising therefrom.

17.9 NOT A PARTNERSHIP OR JOINT VENTURE

Nothing contained in this Agreement shall be deemed to constitute the Parties or any of them partners, joint venturers or principal and agent.

17.10 LIABILITY

This Agreement in no way limits the obligations of DDMI with respect to any environmental matter relating to the Project including, without limitation, the legal obligation to undertake full mine site reclamation and post closure water treatment in respect of the Project and any other potential development within the bounds of the Project.

17.11 DDMI COMMITMENTS

For greater certainty, nothing in this Agreement shall lessen or otherwise remove any of DDMI's Commitments.

17.12 REVIEW OF AGREEMENT

The Parties agree to review, and amend if necessary, this Agreement when the Land Leases are fully executed and the Water Licence is issued to DDMI, to address any conflicts or inconsistencies.

17.13 DDMI AS MANAGER

DDMI represents and warrants that it is the manager of the Project in accordance with the terms of the Joint Venture Agreement and that the terms of the Joint Venture Agreement entitle DDMI to enter into this Agreement and carry out its obligations hereunder.

17.14 FORCE MAJEURE

Except in respect of matters of a serious and imminent threat to the environment in which case this Article 17.14 will not apply, in the event that DDMI is delayed or hindered in or prevented from the performance of its obligations under this Agreement by reason of an event beyond the reasonable control of DDMI, including, without limitation, strikes, inability to procure materials or services, civil commotion, sabotage or act of God, then obligations under this Agreement that are not fulfilled by DDMI as a direct result of such delay or hindrance shall not constitute a default under this Agreement during the period of such delay or hindrance.

17.15 SUSPENSION OF OPERATIONS

DDMI may curtail, suspend or interrupt operations as it sees fit, and during such period of curtailment, suspension or interruption, DDMI shall be excused from the performance of its obligations hereunder to the extent considered reasonable by the Minister in Consultation with the Advisory Board.

17.16 NOTICES

Any notices or communications required or permitted to be given pursuant to this Agreement shall be in writing and shall be delivered, during normal business hours, to, or sent by prepaid registered or certified mail, or confirmed facsimile addressed as follows:

- 1) In the case of a notice or communication to the Minister:

Department of Indian Affairs and Northern Development

P.O. Box 1500
Yellowknife, NT
X1A 2R3

Attention: Regional Director General
Telephone: (867) 669-2501
Facsimile: (867) 669-2703

- 2) In the case of a notice or communication to the GNWT:

Government of the Northwest Territories

P.O. Box 1320
Yellowknife, NT
X1A 2L9

Attention: Deputy Minister
Resources, Wildlife and Economic Development
Telephone: (867) 920-8691
Facsimile: (867) 873-0563

- 3) In the case of a notice or communication to the Government of Nunavut:

Government of Nunavut

P.O. Box 1340
Iqaluit, NU
X0A 0H0

Attention: Deputy Minister
Sustainable Development
Telephone: (867) 979-5900
Facsimile: (867) 975-5982

- 4) In the case of a notice or communication to DDMI:

Diavik Diamond Mines Inc.

P.O. Box 2498
Yellowknife, NT
X1A 2P8

Attention: Vice President - Environmental Affairs
Telephone: (867) 669-6500
Facsimile: (867) 669-9058

- 5) In the case of a notice or communication to Dogrib Treaty 11 Council:

Dogrib Treaty 11 Council

P.O. Box 412
Rae-Edzo, NT
X0E 0Y0

Attention: Grand Chief
Telephone: (867) 392-6381
Facsimile: (867) 392-6389

- 6) In the case of a notice or communication to Lutsel K'e Dene Band:

Lutsel K'e Dene Band

P.O. Box 28
Lutsel K'e, NT
X0E 1A0

Attention: Chief
Telephone: (867) 370-3051
Facsimile: (867) 370-3010

- 7) In the case of a notice or communication to Yellowknives Dene First Nation:

Yellowknives Dene First Nation

P.O. Box 2514
Yellowknife, NT
X1A 2P8

Attention: Chiefs
Telephone: (867) 873-4307
Facsimile: (867) 873-5969

- 8) In the case of a notice or communication to North Slave Métis Alliance:

North Slave Métis Alliance

P.O. Box 340

Yellowknife, NT

X1A 2N3

Attention: President

Telephone: (867) 873-9176

Facsimile: (867) 669-7442

- 9) In the case of a notice or communication to Kitikmeot Inuit Association:

Kitikmeot Inuit Association

P.O. Box 18

Cambridge Bay, NU

X0E 0C0

Attention: President

Telephone: (867) 983-2458

Facsimile: (867) 983-2701

- 10) In the case of a notice or communication with the Advisory Board:

The Advisory Board shall give notice of its address to the Parties and the Government of Nunavut as soon as is practicable.

or at such other address as any Party or the Government of Nunavut may from time to time advise the other Parties, the Government of Nunavut, and the Advisory Board by notice in writing. Any notice given by personal delivery shall be deemed to be received on the date of delivery. Any notice sent by fax shall be deemed to have been received on the next day following receipt by the sender of confirmation of completion or transmission that is not a Saturday, Sunday or statutory holiday in the NWT.

17.17 COUNTERPARTS

This Agreement may be executed in counterparts each of which shall be considered an original and all of which taken together shall constitute a single agreement. The Parties may rely upon copies of this Agreement which are delivered by facsimile as if such copies were originals.

ARTICLE XVIII

TERM

18.1 TERM

- (a) Subject to Article 18.1 (c), this Agreement shall come into effect upon signing by at least DDMI, GNWT and Canada (the date upon which such a signing occurs being called the “Effective Date”).
 - (b) This Agreement shall become binding upon and shall enure to the benefit of each of the other Parties if, as and when they sign this Agreement.
 - (c) Subject to Article 18.1 (d), the provisions of Articles IV, VI, VII, VIII, XII and XIV shall not come into effect unless and until the Land Leases have been fully executed and the Water Licence and all other Regulatory Instruments to commence construction of the Project have been issued to DDMI and DDMI has given written notice to the Minister of its intention to proceed to construct and operate the Project.
 - (d) DDMI may unilaterally waive the condition in Article 18.1 (c).
- 18.2 This Agreement shall terminate upon full and final reclamation and abandonment of the Project site, in accordance with the requirements of all Regulatory Instruments and the terms of this Agreement and completion of any and all post-closure monitoring and maintenance required in connection with the Project.
- 18.3 Once DDMI has ceased Commercial Production at the Project, the Minister may, in his/her discretion, and following Consultation with the Parties and the Advisory Board, do either or both of the following:
- (a) relieve DDMI of its responsibilities and obligations arising from this Agreement to the extent deemed by the Minister to be reasonable in the circumstances; and

(b) set a schedule for winding down and concluding the operation of the Advisory Board.

IN WITNESS WHEREOF the Parties have caused this Agreement to be executed in their respective names by their duly authorized representatives

DIAMOND MINES INC.

By: [Signature] c/s

By: [Signature]

[Signature]
Minister of Indian Affairs and Northern Development, on behalf of Her Majesty The Queen in right of Canada

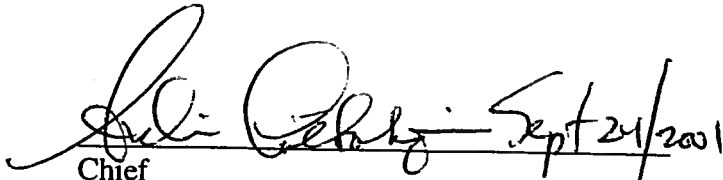
[Signature]
Witness

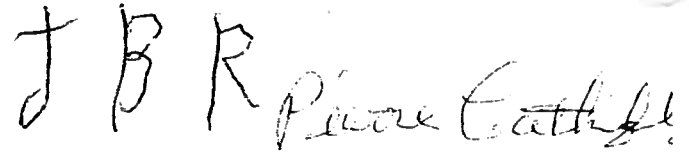
[Signature]
Minister of Resources, Wildlife and Economic Development on behalf of the Government of the Northwest Territories

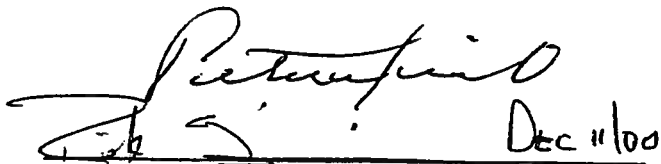
[Signature]
Witness


[Signature]
Grand Chief
Dogrib Treaty 11 Council

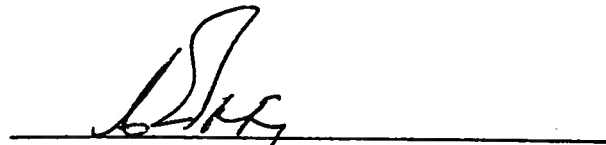
[Signature]
Witness


Chief
Lutsel K'e Dene Band


J B R 
Witness

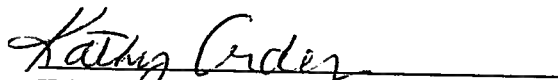

Chief
Yellowknives Dene First Nation


Witness


President
Kitikmeot Inuit Association


Witness


President
North Slave Metis Alliance


Witness

SCHEDULE 1
(millions)

	(A)	(B)	(C)
	Life of Project Closure Costs	Amount of Additional Security Deposit	DDMI Projected Cumulative Progressive R&A Expenditures
2000	C\$15	C\$0	C\$0
2001	C\$20	C\$0	C\$0
2002	C\$25	C\$0	C\$0
2003	C\$40	C\$10	C\$0
2004	C\$48	C\$26	C\$2
2005	C\$56	C\$43	C\$4
2006	C\$65	C\$59	C\$6
2007	C\$74	C\$75	C\$8
2008	C\$80	C\$103	C\$12
2009	C\$86	C\$102	C\$18
2010	C\$92	C\$101	C\$21
2011	C\$98	C\$98	C\$23
2012	C\$103	C\$95	C\$26
2013	C\$105	C\$95	C\$28
2014	C\$107	C\$105	C\$37
2015	C\$109	C\$103	C\$39
2016	C\$111	C\$101	C\$41
2017	C\$113	C\$99	C\$43
2018	C\$115	C\$97	C\$45
2019	C\$117	C\$95	C\$47
2020	C\$119	C\$93	C\$49
2021	C\$121	C\$91	C\$53
2022	C\$123	C\$89	C\$57
2023	C\$123	C\$79	C\$87
2024	C\$123	C\$59	C\$111
2025	C\$123	C\$39	C\$116
2026	C\$123	C\$19	C\$117
2027	C\$123	C\$10	C\$118
2028	C\$123	C\$10	C\$119
2029	C\$123	C\$10	C\$120
2030	C\$123	C\$10	C\$121
2031	C\$123	C\$10	C\$122
2032	C\$123	C\$10	C\$123

