



***Independent Environmental Monitoring Agency***

P.O. Box 1192, Yellowknife, NT X1A 2R2 ▪ Phone (867) 669 9141 ▪ Fax (867) 669 9145  
Website: [www.monitoringagency.net](http://www.monitoringagency.net) ▪ Email: [monitor1@yk.com](mailto:monitor1@yk.com)

October 1, 2014

Carla Conkin  
Director Liabilities and Financial Assurances  
Department of Lands  
Government of the Northwest Territories  
Box 1320  
Yellowknife NT X1A 2L9

Richard Bargery  
Manager, Permitting Jay Project  
Dominion Diamond Ekati Corporation  
1102-4920 52<sup>nd</sup> Street  
Yellowknife NT X1A 3T1

Dear Ms. Conkin and Mr. Bargery

**Re: Agency Proposal for Ekati Environmental Agreement Financial Security**

The Agency is pleased to see the Cost Variance and Progress Review recommence pursuant to s. 13.2 of the Ekati Environmental Agreement. The Agency is willing and able to assist Dominion Diamond Ekati Corporation (DDEC) and the Government of the Northwest Territories given our long and continuous institutional knowledge of the Ekati Mine since our establishment in 1997.

The Agency should be accorded full party status during the discussions and exchanges of information, as set out in s. 13.2 (c) (iii) Environmental Agreement. We support involvement of others (e.g., Wek'eezhii Land and Water Board staff) or consultants when their knowledge and expertise can provide insights and information.

The Agency recognizes that closure and reclamation is a complex process and that the regulation of those activities is not always as clear as it could be given the water licence and Environmental Agreement. The interests of the company in not being over-bonded need to be balanced against the polluter-pays principle (as articulated in current mine closure policy and guidelines) as well as Dene traditional teachings of "Paying the Land". The Agency is also interested in being able to assure the public and all our Society

members that there are sufficient funds to properly close the Mine and to continue to meet the obligations of the Environmental Agreement.

The Agency has taken a conservative approach in estimating the financial security requirements for obligations under the Ekati Environmental Agreement as discussed in the attachment. Give the significant uncertainty around some of the closure objectives, options and criteria and the slow pace of progressive reclamation, it is difficult to predict the success of reclamation and thus the long term budgetary needs of the Agency.

The Agency believes that we will be required to be fully operational during the post-closure monitoring period. It is more difficult to predict what work may be required after post-closure. Not knowing the degree of success of reclamation activities, the Agency has not provided for or predicted any budgetary requirements beyond the post-closure monitoring period as specified by the company. The success of reclamation can and will be reviewed periodically, along with any requirements for oversight and public reporting that the Agency may play. We believe it to be a fair and reasonable approach that the Agency should continue to function during the post-closure monitoring period as it does today—with an office, staff and responsibilities for reviewing monitoring reports and communicating with the public and Aboriginal communities. In the long term, this approach may leave the Agency underfunded to carry out our obligations and duties under the Environmental Agreement.

Please note that the Agency has carefully reviewed the responses provided by DDEC on September 23 and 29, 2014 to the questions and information requests from the Agency and GNWT. Should DDEC provide any further information, we would be pleased to consider it.

We thank you for the opportunity to submit comments and we would be happy to discuss them with you and others at your convenience.

Sincerely,

A handwritten signature in black ink, appearing to read "W.A. Ross".

Bill Ross  
Chairperson

## Agency Proposal for Ekati Environmental Agreement Financial Security

### Introduction

- The Agency's proposal focuses on those sections of the Environmental Agreement where obligations arise that may require financial security, whether or not they relate to closure and reclamation. Where there is agreement that matters are adequately covered in the water licence and/or RECLAIM, the Agency does not propose any different or additional financial security under the Environmental Agreement.
- Agency proposal is organized as follows for each Article of the Environmental Agreement where obligations may arise that have not been covered elsewhere:
  - Background and key information for interpreting or calculating liabilities and obligations. This includes careful analysis and presentation of directly relevant information from the determination of financial security under the Diavik Environmental Agreement as set out in Minister Duncan's letter dated [November 12, 2012](#). The Agency recognizes that there are differences between the Ekati and Diavik Environmental Agreements but this is the only precedent for setting financial security under an Environmental Agreement. We note that DDEC itself has used some examples from the Diavik determination in its proposal;
  - Agency's analysis, if any, on DDEC's June 20, 2014 proposal;
  - Agency's proposal for financial security under the Environmental Agreement; and
  - Agency's rationale for the financial security recommendation.
- The proposal finishes with a summary and conclusions including the Agency position on the Corporate Guarantee, information needs and observations on coordination of security.

### Article IV—Independent Environmental Monitoring Agency

#### s. 4.6 Funding for the Agency

##### Background and Key Information

- Agency's budget for 2014-15 is \$661,933
- Pursuant to the January 17, 2006 Resolution Agreement, the Agency's budget shall increase automatically by the Canada Consumer Price Index for January compared to the previous year. This has resulted in a budgetary increase of 0.3% to 2.9% annually.
- The Diavik EA security determination set a 3 year interim closure period, 7 year post-closure period with EMAB operations for 10 years = \$6 million.
- Finally, we note that there was no provision for a reduced budget for EMAB during the post-closure period in the Diavik EA security determination.

##### Analysis of DDEC Proposal

- DDEC has not used the current Agency budget as a base amount

- DDEC has used a 1 year transition period, 3 years for active reclamation, 11 years of pump flooding with a reduced Agency budget of \$200,000 based on “scale of reclamation of activities and level of effort necessary by the Agency” followed by a lump sum payment of \$500,000
- DDEC’s own RECLAIM Post-Closure Monitoring and Maintenance spreadsheet shows the following:
  - 16 years of AEMP and SNP monitoring;
  - 39 years of pit water quality monitoring during flooding;
  - 60 years of pit water quality monitoring post flooding;
  - 13 years of geotechnical inspections for land and permafrost;
  - 13 years of AQMP, WEMP, site vegetation monitoring, seepage monitoring;
  - 10 years of LLCF vegetation monitoring;
  - 6 years of archaeology monitoring; and
  - 13 years of Annual Reports for the water licence and Environmental Agreement.
- The Agency does not accept or support DDEC’s proposal.

#### Agency Proposal

- \$662,000 (plus CPI @ 2% increase for each year) X 16 years = \$12.324 million

#### Agency Rationale

- The Agency is of the view that a one-year transition or interim closure and maintenance period as proposed by DDEC is too short. If the property was to be abandoned or the owners were to go into receivership or bankruptcy, there would be a protracted set of legal proceedings that could well go beyond a year. Additional time and effort would be required to develop interim arrangements and contracts for care and maintenance, and to develop a final closure plan. As a worst case, for the Giant Mine it took six years to develop a closure plan, another two years to develop a water licence application and then over six years for an environmental assessment. The Agency proposes a three-year interim closure and maintenance period, as was used by the WLWB in the Ekati water licence security and as set in the determination on the Diavik Environmental Agreement security.
- In addition to a three-year interim care and maintenance period, the Agency agrees with the three-year period proposed by DDEC for primary reclamation activities. This would then be followed by a minimum ten-year period of post-closure monitoring as found in the ICRP Appendix 5.1-6 and presumably in the RECLAIM tab on Post-Closure Monitoring & Maintenance (3 years for primary reclamation and 10 years of post-closure monitoring for most programs).
- With 3 years of interim closure and maintenance, 3 years of primary reclamation activities and 10 years of post-closure monitoring, the Agency would require 16 years of funding. The Agency believes that while reclamation activities might diminish, post-closure monitoring and management is still required and that the Agency will be expected

to review and evaluate these activities and reports, regulatory submissions and to carry out its communications mandate (annual reporting, Society functions under the NWT *Societies Act*, maintain an office and staff in Yellowknife). We do not foresee a significant reduction in the effort that will be required of the Agency to fulfill its mandate over the 16 year period as detailed above. In reality, there is likely to be heightened interest in the success of reclamation from the public and communities. It is very difficult to predict what the monitoring and management requirements may be beyond 16 years. The Agency believes that any further role and mandate for the Agency should be evaluated five years into post-closure monitoring, where a more informed view and appropriate decisions could be taken. Such a review is consistent with the review and amendment provisions of the Environmental Agreement (s. 15.2). A review at that point would also be important for adaptive management purposes should reclamation not be working out as planned. A specific example may well be the monitoring of revegetation. Experience at Ekati has shown that revegetation may appear to be growing satisfactorily for many years but then fail. Adjustments to revegetation may require adaptive management during closure.

## **Article V—Reporting Requirements**

### s. 5.1 Annual Report

#### Background and Key Information

- Article requires that the company consult with the Agency during preparation of the report and there is an expectation that the Agency will review the report, as it has done consistently for over 15 years.
- The annual reports required under the water licence and the Environmental Agreement, were combined in 2000 (for the 1999 calendar year reports) and there was an agreement that the submission dates would also be coordinated.
- The company has in the past indicated that it meets with communities at least on an annual basis to discuss the report and its general operations.
- The Diavik EA security determination did not explicitly deal with annual reporting costs.

#### Analysis of DDEC Proposal

- DDEC proposed an annual allocation of \$10,000 for production and review of the combined water licence and Environmental Agreement annual report for a 13 year period. The costs for this activity were pulled out of the WEMP and seepage monitoring program costs by reducing each of these by \$5,000 a year. The company stated at the August 15 meeting that it could reduce all of the programs listed to account for reporting costs, but for the sake of simplicity, chose the two identified above.
- The Agency believes that the cost estimate by DDEC is unrealistically low.

#### Agency Proposal

- \$25,000 X 16 years = \$400,000

#### Agency Rationale

- The Agency believes that a cost of \$25,000 per year for Annual Report consultation with the Agency and government, preparation of the document, preparation of a plain language version (as required in the EA), and distribution is a much more reasonable amount. This includes some provision for the contingency of responding to Minister's Reports that may be issued under the EA as happened with the 2005 Annual Report. Costs associated with public meetings in relation to the Annual Reports are discussed below under s. 5.3.
- It would be helpful to know what costs DDEC has actually incurred in the development, preparation and distribution of the Annual Report. While the Agency requested this information on September 5, 2014 DDEC did not provide it (see response dated September 23, 2014).

#### s. 5.2 Environmental Impact Report

##### Background and Key Information

- Article 5.2 (b) requires that company consult with the Agency (and the GNWT) during preparation of the report and there is an expectation that the Agency will review the report, as it has done consistently for the previous five reports (2000, 2003, 2006, 2009 and 2012).
- DDEC has requested that the EIR cover the Annual Report requirements in those years where the EIR is submitted. The Agency and some other parties have not supported this approach in the past as there is a different purpose to the two types of reports (with the EIR focusing on trends, performance and adaptive management rather than annual monitoring program results). The Agency was also concerned about delays in the EIR report submission that would affect the Agency's Annual Report as the company's Annual Report is often a major source of information used in assessing environmental performance. The newly agreed upon submission date for the EIR is set for June 2015 (*Information for the Environmental Impact Report Technical Session*) and September 2015 for the EIR itself and a plain language summary (2012 EIR Close-Out Report). The regular Annual Report for 2014 would continue to be a separate document. This schedule and approach was arrived at following extensive discussions at two workshops.

##### Analysis of DDEC Proposal

- DDEC has proposed an average figure of \$50,000 for each EIR and that five cycles should be included in the EA security calculation. It is not clear whether these cost estimates were inserted into the RECLAIM spreadsheets. The company has also included costs related to public meetings, consultation and engagement in its cost estimate for the EIR.

- The Agency believes that the cost estimate by DDEC for the EIR preparation is realistic but that it would not cover the cost of public meetings or engagement. Our proposal on public meetings or engagement related to Annual Reports and EIRs appears below in s. 5.3.
- The company believes the EIR costs will quickly decline with the reports largely becoming documentary. The Agency does not share this view as we believe there will likely be a heightened public interest in making sure that closure proceeds well and that conditions start to return to baseline as shown through long-term trend analysis, precisely the information to be included in the EIR.
- It would be helpful to know what costs DDEC has actually incurred in the development, preparation and distribution of the EIR as requested by the Agency on September 3, 2014. DDEC did not provide this information in its response dated September 23, 2014.

### s. 5.3 Public Meetings for the Annual Report and Environmental Impact Report

#### Background and Key Information

- The WLWB [Reasons for Decision](#) (page 4) on water licence security included \$1 million for the preparation of the final closure plan, including public engagement. No amount was identified in RECLAIM for public engagement in relation to the Annual Report or EIR engagement.
- The 2012 EIR Close-Out Report commits the company to Technical Workshops and Public Workshops in response to a Minister's Report that was issued on the 2009 EIR.
- The company stated at the August 15<sup>th</sup> meeting that it would reconsider its treatment of public meetings or engagement as part of the Annual Report and EIR cost estimates.
- In the Diavik EA security determination, \$4.6 million was estimated for "consultation and engagement in advance of and during reclamation effort". More specifically the following were included:
  - community meetings were included for Ndilo/Dettah, Gameti, Wekweti, Behchoko, Lutsel K'e, Kugluktuk and Yellowknife in relation to water licence acquisition (Years 0 and 1);
  - site visits during the 7 year post closure period (Years 3,7, and 10); and
  - bi-annual community meeting (Years 2, 4, 6 and 8).

#### Analysis of DDEC Proposal

- DDEC proposes that any public meeting requirements related to both the Annual Report and the EIR processes is encompassed in the \$10,000 per year allocation for 13 years of annual reporting under the Post-Closure Monitoring & Maintenance tab in RECLAIM.
- The Agency does not support or agree with the DDEC cost estimates for the Annual Report and the EIR preparation and public meetings or engagement costs. These costs are unreasonably low.

- The Agency acknowledges that DDEC as the new owner of Ekati, has begun to seriously engage with communities as part of a renewed commitment towards its ‘social licence’.

#### Agency Proposal

- \$650,000 X 16 years = \$8.45 million

#### Agency Rationale

- The Agency accepts the AANDC Diavik EA security determination figures for consultation for the same communities that DDEC should engage. That determination used an average figure of approximately \$650,000 per year for a seven year period. The Agency has proposed a 16 year period for interim care and maintenance, active reclamation and post-closure monitoring as noted above in our discussion of Article IV. This is the rationale for a 16 year period for public meetings and public engagement in relation to the Annual Reports and EIR. This would also include efforts on engagement in relation to other regulatory requirements including water licensing and closure.

### **Article VI—Environmental Management Plans**

#### s. 6.4 Review of Environment Management Plans

##### Background and Key Information

- There is no regular or periodic review of the Environmental Management Plans specified in the Environmental Agreement. For example, the review of all the diamond mine wildlife monitoring programs was done jointly, at the request of the companies, and took place over at least a couple of years that involved several large workshops and smaller meetings.
- Several of the plans listed in s. 6.1 are part of the water licence and go through a periodic review.

##### Analysis of DDEC Proposal

- DDEC has proposed to allocate a lump sum of \$50,000 for the revision of Environmental Management Plans from the \$1 million now in the RECLAIM Mobilization tab. The \$1 million amount was specifically identified by the WLWB in its [Reasons for Decision](#) (page 4) on water licence security for “Preparation of the final closure plan. This cost covers production of the final closure plan, reclamation research, regulatory work, and community engagement.”
- The Agency does not agree or support that the cost estimate for Environmental Management Plan revisions should be removed from the cost estimate for the preparation of the final closure plan. We believe that adjusting management plans based on the findings of monitoring programs is wise practice and should be included based on experience at Ekati. The management plan revisions should be an additional amount of security held under the Environmental Agreement for those plans not part of the water

licence (i.e., the Air Quality Monitoring Program, Wildlife Effects Monitoring Program and Traffic Management Plan).

#### Agency Proposal

- \$10,000 X 16 years = \$160,000

#### Agency Rationale

- It is not clear when the listed management plans were last updated and whether further updates, and hence further costs, would be necessary during the post-closure period. The Agency acknowledges that several of the plans listed are part of the water licence and go through a periodic regular review. However, at least three of the plans are out of date. For example:
  - The Air Quality Management and Monitoring Plan (AQMMP) needs to be updated to reflect the operation of the incinerators and the Lynx Project. The Agency has noted a marked improvement in DDECs air quality programs;
  - The last version of the Wildlife Management Plan that the Agency has is dated 2000 and it does not reflect current monitoring programs, mitigation measures, or lessons learned such as building skirting, exclusion areas in pits for nesting birds and other matters. The company has indicated several times over the last couple of years that a revised version is in preparation; and
  - The Traffic Management Plan was subject of much discussion during the Lynx public hearing and the information provided by DDEC to date does not constitute a traffic management plan.
- The AQMMP and Wildlife Management Plans will need to be redesigned for closure activities. Other changes may occur such as a rebound in the Bathurst caribou herd where aerial surveys will again yield useful information for management purposes. The Agency expects that the management plans will need to change over time and has applied a rough estimate of revision costs over the 16 year period referred to above.

### **Article VII—Environmental Monitoring Programs**

#### s. 7.1 Environmental Monitoring Programs

##### Background and Key Information

- The RECLAIM spreadsheets for the water licence security determination show most monitoring programs carrying on for 13 years, which appears to include the 10 year post-closure period set out in the ICRP and a three-year care and maintenance period as required by the WLWB.

##### Analysis of DDEC Proposal

- DDEC is proposing a one-year transition period in its EA security proposal. For reasons stated above, the Agency believes this should be three years, followed by a three year

period for intensive reclamation activities and a 10 year period for post-closure monitoring. The site water monitoring (AEMP and SNP) in the same tab is shown as continuing for 16 years.

#### Agency Proposal

- \$360,000 X 3 years = \$1,080,000

#### Agency Rationale

- Three additional years of monitoring for the following programs are included:
  - geotechnical inspections for land and permafrost (\$50k and \$40k annually);
  - AQMP, WEMP, site vegetation monitoring, seepage monitoring (\$25k, \$95k, \$30k and \$45k respectively and annually);
  - LLCF vegetation monitoring (\$75k annually). This number assumes the revegetation program succeeds. Should it fail (e.g., should revegetation grow for ten years and then die off), the monitoring program would need to continue for much longer.

### **Article IX—Ongoing Environmental Compliance**

#### s. 9.1 General Ongoing Environmental Compliance

##### Background and Key Information

- DDEC proposes a figure of \$0.75 million for compliance with a list of regulatory requirements listed in s. 1.2 of the ICRP as follows:
  - Class A Water Licence MV2003L2-0013;
  - Class A Water Licence MV2001L2-0008;
  - Environmental Agreement;
  - Class A Land Use Permits;
  - Land Leases;
  - Fisheries Act Authorizations. Numbers SCA96021, SC00028, SCO1111, SCO1186 and SC99037;
  - ICRP Terms of Reference;
  - Mine Site Reclamation Policy for the Northwest Territories 2002; and the Mine Site Reclamation Guidelines for the Northwest Territories (INAC 2007);
  - Navigable Waters Protection Act Authorization;
  - Explosives Magazine Permit;
  - Licence to Manufacture Explosives; and
  - Workers Compensation Board (WCB) Regulations.

#### Analysis of DDEC Proposal

- Some of the regulatory requirements have their own form of security for compliance (e.g., the water licence, Environmental Agreement, and Fisheries Authorizations). Some of the regulatory requirements are obviously outdated (e.g., the water licences cited).
- When asked at the August 15<sup>th</sup> meeting, DDEC said that the figure proposed was a best guess.
- It would be helpful for DDEC to provide a more up-to-date list of its permits and licences relating to environmental matters and whether in its opinion, additional security may be required under the Environmental Agreement. DDEC did not provide this information in its September 23, 2014 response to the Agency September 5, 2014 request.

#### Agency Proposal

- Agency has no cost estimates to propose until DDEC provides additional information. DDEC should provide an up-to-date list of its permits and licences relating to environmental matters, and whether in its opinion, additional security may be required under the Environmental Agreement to ensure compliance. This information was not provided in DDEC's response of September 23, 2014.

### **Article X—Archaeological Sites**

#### s. 10.2 Archaeological Surveys

##### Background and Key Information

- DDEC has included a six-year archaeological monitoring program in the Post-Closure Monitoring & Maintenance tab of RECLAIM. The annual cost for the program is \$10,000.

##### Analysis of DDEC Proposal

- The Agency believes that this program may not need to be covered under the Environmental Agreement and encourages GNWT to consider the adequacy of the term of the archaeological monitoring program and the annual cost in DDEC's RECLAIM spreadsheet.

### **Article XI—Traditional Knowledge**

#### s. 11.1 Phase II Traditional Knowledge Studies and s. 11.3 Incorporation of Traditional Knowledge

##### Background and Key Information

- DDEC has identified TK inclusion in the final closure plan as a lump sum amount of \$50,000 in the Mobilization tab of RECLAIM.
- In the approved [Interim Closure and Reclamation Plan](#), the TK Reclamation Research Plan was estimated at \$100-150 k (ICRP Appendices 5.1-4, page 188).

### Analysis of DDEC Proposal

- There is no explanation for the discrepancy in the TK studies cost estimates.
- The Agency prefers that the TK studies be considered as part of the Reclamation Research Plans discussed below in Article XII.

## Article XII—Studies and Research

### s. 12.1 Reclamation Plan Studies

#### Background and Key Information

- This part of the Environmental Agreement covers research necessary to develop the Reclamation Plan as follows:
  - “The company shall:
    - i) conduct revegetation and reclamation studies as portions of the Project site are reclaimed and incorporate the results of such studies in the Reclamation Plan; and
    - ii) conduct studies with respect to alternate methods of pit refilling and incorporate the results of such studies in the Reclamation Plan.”
- The [ICRP](#) provides cost estimates for Reclamation Research Plans and Engineering Studies that total \$16.6 million (Appendices 5.1-4 and 5.1-5 ICRP RRs = \$10.5 million, Eng. Studies = \$6.1 million). These cost estimates were required by the WLWB in an Advisory Document letter dated [July 7, 2008](#). The Advisory Document was based on the Reclamation Research Plan framework proposed by BHPB in a letter dated [June 28, 2008](#) that followed extensive discussion of the framework by a multi-stakeholder Working Group.
- WLWB [Reasons for Decision](#) (page 4) on the water licence financial security included an extra \$1 million for preparation of the final closure plan including reclamation research, regulatory work and community engagement.
- Based on discussions at the August 15<sup>th</sup> meeting, DDEC is of the view that the WLWB water licence security determination and the RECLAIM spreadsheets cover all of the reclamation research requirements and costs, and that no additional financial security is required under the Environmental Agreement. DDEC also believes that the WLWB provided an open and transparent process for the determination of those costs and that it would be unfair for any additional security to be required under the Environmental Agreement.
- TK is treated as a Reclamation Research Plan in the ICRP and estimated at \$100-150k in DDEC’s June 14, 2014 Environmental Agreement financial security proposal.
- In the Diavik EA financial security determination, \$12.3 million was estimated as a result of “uncertainty remains in the Interim Closure and Reclamation Plan with respect to

several elements on site including closure approach for the North Country Rock Pile, Processed Kimberlite Containment, Open Pit and North Inlet. Costs are for alternative reclamation options.”

#### Analysis of DDEC Proposal

- There is a very significant gap between what the company estimated its reclamation research work at as part of the ICRP preparation, and what the WLWB accepted and the company now proposes (\$16.6 million vs. \$1 million as proposed by the WLWB and \$0.85 million as now proposed by DDEC).
- The Agency recognizes that DDEC has made some progress on its reclamation research since the cost figures were developed particularly in the area of the LLCF pilot revegetation area and study. At the same time, there have likely been increases for fuel, wages and benefits and consultant fees. The Agency has also commented on the two Annual Progress Reports submitted to date since the ICRP was approved (letters dated [February 5, 2013](#) and [March 5, 2014](#)) and significant delays in the reclamation research were noted. DDEC did not provide any new information in its September 23, 2014 response to the Agency September 5, 2014 request. The basic question is one of fairness to the company and to the public to ensure full and final closure in a timely fashion based on adequate financial security to carry out the necessary work. The Agency is of the view that additional financial security for reclamation research is required under the Environmental Agreement.

#### Agency Proposal

- \$15.5 million

#### Agency Rationale

- In the absence of any additional information on the remaining reclamation research work, the Agency believes it is reasonable to recommend that \$15.5 million for this work should be set aside as financial security under the Environmental Agreement.
- The Agency (and perhaps others) understood the reclamation research plans proposed by BHPB and since approved by the WLWB to be adequate based, in part, on the cost estimates provided in the ICRP.
- Although the WLWB has made a determination of financial security under the water licence for the ICRP, the company still has obligations under the Environmental Agreement for reclamation research (s. 12.1). The Environmental Agreement security is “in addition to, and not in substitution for, the security which DDEC may be required to provide pursuant to any Water Licence” (s. 13.1(c)).
- The Department of Indian Affairs and Northern Development used the security provisions of the Environmental Agreement on at least two occasions when there was a shortfall of overall financial security for proper closure under the water licence (letters

dated September 9, 2003 where an additional amount of \$15,986,358 was required and December 22, 2004 where an additional amount of \$13,230,019 was required).

- The Agency prefers to have the TK research necessary for closure planning included here rather than as a new requirement under Article XI.

#### s. 12.4 Other Studies

##### Background and Key Information

- This part of the Environmental Agreement establishes a requirement for “research necessary to carry out its obligations under this Agreement”. This research relates back to the items in the Recitals, most notably Recital F “DDEC proposes to conduct adaptive environmental management to minimize the environmental impact of the Project and in connection therewith it is necessary and appropriate to ensure that research and monitoring with respect to the effect of the Project...be carried out throughout the term of the Project.”
- The company has ongoing studies related to hydrocarbons in Leslie Lake fish, and uncertainties have been identified with regard to dioxins and furans in aquatic food chains in Kodiak Lake, and the drivers of the Zone of Influence for caribou avoidance of the mine site. The company has also committed to study dust suppression methods with a view to improving air quality and reduce deposition (see Agency letter dated [July 18, 2014](#)). The first three matters were raised by the Agency in the November 4, 2013 meeting to discuss Environmental Agreement financial security.

##### Analysis of DDEC Proposal

- DDEC has not considered this matter and has not proposed an amount that would cover such research.

##### Agency Proposal

- \$200,000

##### Agency Rationale

- The Agency has estimated the cost of these studies based on our best judgement. If DDEC can provide more accurate cost estimates, the Agency would reconsider this amount. It would be helpful to know how much the studies on the issue of fish hydrocarbon studies have cost to date (for example, [Cell E Fish Survey – Work Plan 2008](#) and [A Study Of Fish In Cell E Of The Long Lake Containment Facility 2008](#)). DDEC has declined to provide this information in its September 23, 2014 response to the Agency’s September 5, 2014 request.

## **Article XIII—Security and Enforcement**

### s. 13.2 Cost Variance and Progress Review

#### Background and Key Information

- The current review of financial security under the Environmental Agreement as required every two years.

#### Analysis of DDEC Proposal

- DDEC did not estimate any costs associated with the Cost Variance and Progress Review.
- In the August 15<sup>th</sup> meeting, DDEC acknowledged that it would reconsider this article and more particularly, the costs that may be associated with preparation and review of proposals for EA security.

#### Agency Proposal

- \$50,000 X 6 times = \$300,000

#### Agency Rationale

- The Agency has estimated the cost of this process based on our best judgement using six cycles of Cost Variance and Progress Report which would take Ekati well into closure and post-closure monitoring. If DDEC can provide more accurate cost estimates, the Agency would reconsider this amount.
- There may be opportunities to coordinate the Cost Variance and Progress Review with the Annual Progress Report required under the water licence.

### s. 13.1(b)(iv) and 13.4(a) Serious and Imminent Threat

#### Background and Key Information

- The Environmental Agreement provides that should there be a serious or imminent threat to the environment, the security deposit and/or the corporate guarantee may be immediately accessed by the Minister without notice to the company for an opportunity to rectify the default.
- In the Diavik Environmental Agreement security determination, a cost estimate of \$719,000 was identified for a worst case scenario of overtopping of the tailings area.

#### Analysis of DDEC Proposal

- DDEC did not estimate any costs associated with a serious or imminent threat.
- In the August 15<sup>th</sup> meeting, DDEC acknowledged that it would reconsider this article. At the November 3, 2013 meeting, the issue of serious and imminent threat to the environment was raised by the Agency as a discussion item where security may be required.

#### Agency Proposal

- \$2,000,0000

#### Agency Rationale

- The Agency has estimated the potential cost of a serious and imminent threat by using a worst case scenario of overtopping of the LLCF as happened with the Fay Bay spill in May 2008. DDEC expended significant resource in remediation and monitoring of the area (for example, see the [2010 Fay Bay Monitoring Program](#) report and [BHPB response to a warning letter](#)). If DDEC can provide more accurate cost estimates, the Agency would reconsider this amount. DDEC did not provide this information in its September 23, 2014 response to the Agency.

#### Summary and Conclusions

Table 1 summarizes the proposed EA security by the Agency and DDEC. The Agency provides a few concluding remarks below.

#### Corporate Guarantee

- In most of the meetings to discuss the Environmental Agreement security, there has been discussion as to the intent and purpose of the \$20 million corporate guarantee from the parent company identified in s. 13.1(b). The Agency's position is that this is "in addition to the Security Deposit" noted in the preceding section, for performance of obligations under the Environmental Agreement. It is like an additional insurance policy should the security held not cover the work that may be required for non-performance. This is the same view put forward in the September 9, 2003 letter from Indian and Northern Affairs Canada to BHP where it was stated: "The Guarantee was a negotiated fixed amount of soft security that was not intended to be linked to the periodic calculation of reclamation costs or the required Security Deposits."
- There is the potential to consider the Corporate Guarantee in Progress Review (s. 13.2(d)(i)) but the Agency is of the view that it is not appropriate to do so at this time given the stage of the life of the mine and the significant delays in closure planning and research, and delays in posting of security.

#### Information Needs

- A more accurate estimation of financial security under the EA could be achieved with the following information as identified above:
  - DDEC provide historical costs for the development, preparation and distribution of the Annual Report and EIR;

- DDEC indicate when the listed management plans were last updated, the normal review cycle, and whether further updates are anticipated during the closure and post-closure period;
  - DDEC provide a more up-to-date list of its permits and licences relating to environmental matters and whether in its opinion, additional security may be required under the Environmental Agreement to ensure compliance;
  - GNWT consider the adequacy of the term of the archaeological monitoring program and the annual cost in DDEC's RECLAIM spreadsheet;
  - DDEC provide cost estimates for the remaining reclamation research (including TK studies);
  - DDEC provide cost estimates for its adaptive management research for fish exposed to hydrocarbons, dioxins and furans in Kodiak Lake sediments, clarifying the drivers of the Zone of Influence for caribou avoidance, and improving dust suppression at the site;
  - DDEC provide cost estimates for the Cost Variance and Progress Review of EA security; and
  - DDEC provide cost estimates for a worst case scenario such as over-topping of the LLCF by processed kimberlite (cost associated with the remediation and monitoring of the Fay Bay spill would be a comparable example).
- The Agency requested this information of DDEC in an e-mail dated September 5, 2014. DDEC did not provide the information stating it was irrelevant to the current process, covered in the water licence security determination, or already encompassed in its original June 20, 2014 proposal.

### Security Review Coordination

- It would be very helpful if all parties could become more familiar with RECLAIM as a tool for estimating reclamation liability. As we understand it, Version 7 is now in use even though the ICRP and Environmental Agreement security reviews to date have used Version 6.2. GNWT should work with its consultant to ensure that the model is kept up to date and is publicly accessible. Some consideration should also be given to building in components or line items that relate to the split between land and water, and water licence vs. Environmental Agreement requirements. This would facilitate a better coordination of the review of securities held under the two different instruments.
- The Agency is not aware of any explicit closure and reclamation guidance from GNWT as the new manager of lands and waters in the NWT. We understand that GNWT endorsed the joint AANDC-MVLWB Closure Guidelines but GNWT should consider working with the MVLWB to clarify or update that document to provide a clearer policy direction.
- The Agency hopes that the current EA security review can be completed and security posted by the end of the calendar year.

- The Agency has no specific advice at this time on how to better coordinate the review and adjustment of water licence and EA security, other than the above observations on RECLAIM. However, it would be helpful to have a “lessons learned” review and/or meeting or workshop of interested parties when the current EA security review is completed for Ekati. It is our understanding that the MVLWB Working Group on Securities completed a report but it was not implemented due to the complexities and time constraints of devolution. It may be time to revisit that work and re-establish the Working Group with a view to coordination of water licence and EA security. Some consideration might be given to how security reviews have worked for other mines or other jurisdictions (for example, the [Initiative for Responsible Mining Assurance](#) and its [Draft Standard for Responsible Mining](#)).

**Table 1. Summary of Proposals for Environmental Agreement Security**

<b>Article</b>	<b>Agency Proposal Amount</b>	<b>DDEC Proposal Amount</b>
IV—Agency Funding	\$12,324,000	\$5,100,000
V—Annual Report	\$400,000	\$0 (\$130,000 reallocated from within Post-Closure Monitoring & Maintenance tab)
V—Public Meetings	\$8,450,000	Included in Annual Report above
VI—Revision of Environmental Management Plans	\$160,000	\$0 (\$130,000 reallocated from within Mobilization tab)
VII—Environmental Monitoring Programs	\$1,080,000	\$0 (not included in the monitoring period chosen by DDEC)
IX—Ongoing Environmental Compliance	Additional information requested of DDEC	\$750,000
X—Archaeological Sites	Additional information requested of GNWT	\$0 (\$60,000 reallocated from within Post-Closure Monitoring & Maintenance tab)
XI—Traditional Knowledge	Agency prefers to deal with TK as part of Article XII	\$0 (\$50,000 reallocated from within Mobilization tab)
XII—Reclamation Research	\$15,500,000 for reclamation research	\$0 (\$850,000 reallocated from within Mobilization tab for RRP and TK work)
XII—Other Studies	\$200,000	\$0 (Not covered by DDEC)
XIII—Cost Variance and Progress Review	\$300,000	\$0 (Not covered by DDEC)
XIII—Serious and Imminent Threat	\$2,000,000	\$0 (Not covered by DDEC)
<b>TOTAL</b>	<b>\$40,558,000</b>	<b>\$5,850,000</b>