KITIKMEOT INUIT ASSOCIATION
WRITTEN HEARING SUBMISSION

NUNAVUT WATER BOARD REVIEW OF DRAFT *NUNAVUT WATER REGULATIONS*

Executive Summary

In these submissions the Kitikmeot Inuit Association (KitIA) ask the Nunavut Water Board (NWB) to consider three issues in the NWB's review of the Draft Nunavut Water Regulations (Draft Regulations) made under the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (*NWNSRTA* or Act). The issues are:

Reclamation security (Draft Regulations section 10)

1. Double bonding issue
2. The security matching criteria issue

Licensing fees (Draft Regulations sections 11 and 12)

3. The double payment of water use fees on IOL

Double Bonding

Double bonding occurs when a licensee must provide security, related to a development project, to more than one payee. The *NWNSRTA* and the current Regulations allow the Crown to take and hold security from licensees. This security is mainly required to ensure proper closure and reclamation of licensed sites. The security can also be used to compensate adversely affected users and for the reimbursement of the Crown, should the licensee not take the necessary preventive or remedial measures and the Crown must do so.

We submit that the Act's treatment of water licence security has mixed up the regulatory regime's role in protecting the environment with the interests of private land owners when a development requiring a water licence takes place on private land. The overlap problem is worse when the private lands are Inuit Owned Lands (IOL) because Inuit have other unique rights, under Articles 6, 20 and 21 of the NLCA. These rights are affected by development and are not part of the public law environmental protection framework.

The NWB has addressed security in a number of its decisions and has required an applicant, a licensee or a prospective assignee to provide security to the Minister. However, the DIO, as the landowner of IOL, also required security to protect Inuit rights and interests. In those proceedings, INAC argued that the NWB should split the land and water security. However, splitting land and water security is not compatible with the Inuit view of the "land". Also, based on an analysis of the *NWNSRTA* and the Regulations, security splitting is not possible, in our submission. The Board has declined to split the security in its decisions.

Aboriginal Affairs and Northern Development Canada (AANDC) has stated that it does not want to address double bonding in s. 10 of the Draft Regulations because it has stated: "[t]he Department is committed to addressing the perceived over-bonding issue via a pan-northern focus and does not intend to amend the Regulations at this time."[1] However, we submit that the

[1] AANDC document entitled "Responses to Issues raised in the Nunavut Water Board's Technical/Pre-hearing Conference Meetings in Iqaluit and Yellowknife the Week of May 30, 2011", date June 20, 2011

double bonding issue is likely the single most important issue to be considered in relation to the Draft Regulations, in the view of Inuit. It is our submission that this matter can and should be resolved in these Draft Regulations, even if it means delaying their completion. The Board's review of the Draft Regulations offers the chance for the double bonding issue to be resolved without the further delay of another process. We submit that this issue should be addressed now.

In our submission, an amendment to s. 76(1) of the *NWNSRTA* could help to solve the double bonding issue. Under the current s. 76(1), the Board may only require that security be furnished and maintained with the Minister. However, this could be changed so that the Board could require that security be provided to another party, such as a DIO. That way, the Crown could hold land and water security for portions of a project located on Crown land and the DIO could hold it for portions located on IOL.

We submit that the Board should recommend a change to s. 76(1) of the *NWNSRTA* to resolve the double bonding issue. The Board has the authority make such a recommendation to the Minister even though the Act is not being reviewed.

Security Matching Criteria

The Board may require security related to a water licence. There are three criteria to determine the types of security to be provided, under s. 10(1) of the Draft Regulations. However, the s. 10(1) criteria do not match the criteria under s. 76(2) of the *NWNSRTA* that allow the Minister to apply that security. The s. 10(1) criteria do not include the power to require security to be provided for compensation under s. 13 of the *NWNSTRA*. This is not consistent with s. 76(2)(a) of the Act, which allows the Minister to apply the security to compensate a person, including a Designated Inuit Organization, under s. 13 of the Act.

Under s. 76(2)(b) the Minister may apply the security to reimburse the federal Crown, for reasonable costs for remedial measures or for closure and reclamation costs. Since the Act overrules the Regulations, the Minister can apply security for a s. 13 compensation matter. However, if the Minister does this, there may not be enough security left to cover the total amounts for the three criteria that security were provided for under s. 10(1). The Crown may be left to pay for the rest of those costs.

Double Payment of Water Use Fees

Section 12 of the Draft Regulations requires a licensee to pay water use fees, which can result in the double payment of water use fees on IOL. This problem occurs when an Inuit land owner exercises its exclusive right to water use on IOL, under Article 20.2.2 of the NLCA, and charges a fee for water use on IOL. The double payment of water use fees arises when the Crown also charges a fee for water use on IOL.

The opportunity for Inuit to take full advantage of their land claim right to exclusive use of water on IOL is limited by the Crown charging a water use fee on IOL. The DIO must keep its water use fees low because the developer must pay water use fees to both AANDC and to the DIO. This negatively affects the DIO's right to benefit from its exclusive right to use water on IOL. The double charging for water use on IOL could also be a barrier to development on IOL.

We submit that the change required to section 12 is to exempt a developer on IOL from paying water use fees to AANDC if the developer has already paid water use fees to a DIO. This would reflect the Inuit right under Article 20 to the exclusive use of waters on, in or flowing through IOL and it would prevent the payment of additional water use fees on IOL by a developer.