



## NUNAVUT WATER BOARD

### REASONS FOR DECISION INCLUDING RECORD OF PROCEEDINGS

In the Matter of:

Applicant: Aboriginal Affairs and Northern Development Canada

Subject: Concurrence Decision and Consultation  
Recommendations on the Draft Nunavut Waters  
Regulations

Date: November 14, 2011

Precedence: Where there is any inconsistency or conflict between the *Nunavut Land Claims Agreement* and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSRTA)*, the Agreement prevails to the extent of the inconsistency or conflict. Where there is any inconsistency or conflict between the *NWNSRTA* and any other act of Parliament, except the *Nunavut Land Claims Agreement Act*, the *NWNSRTA* prevails to the extent of the inconsistency or conflict.

## RECORD OF PROCEEDINGS

Applicant: Honourable John Duncan, P.C., M.P.  
Minister Aboriginal Affairs and Northern Development Canada  
(formerly Indian and Northern Affairs Canada)

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Purpose: Consultation Recommendations and Concurrence Decision on the  
Draft Nunavut Waters Regulations Review

Draft Received: March 4, 2011

Draft Received From: Janet King, Assistant Deputy Minister  
Aboriginal Affairs and Northern Development

Date(s) & Location of Hearing(s): Day 1: September 13, 2011 Iqaluit, NU  
Day 2: September 15, 2011 Rankin Inlet, NU  
Day 3: September 16, 2011 Cambridge Bay, NU

Board Panel Members Present: Chairman Thomas Kabloona  
Vice-Chairman Lootie Toomasie  
Member Ross Mrazek

Board Staff: Executive Director D. Filiatrault  
Board Secretary/Interpreter B. Kogvik  
Manager of Licensing P. Beaulieu

Interpreter(s): Inuktitut (Iqaluit) S. Peter  
French (Iqaluit) E. Denis  
Inuktitut (Rankin Inlet) J. Ell  
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NWB Legal Counsel: Miller Thomson LLP C. Emrick

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Sound Technician: Pido Productions R. Dempster

Minister's Representative: Aboriginal Affairs and Northern Development Canada (AANDC)  
• G. Binda, Senior Advisor

- P.L. Lavoie, Legal Counsel
- T. Milojevic, Land and Water Management Directorate

Parties:

Northwest Territories and Nunavut Chamber of Mines

- E. Kingston, General Manager

Kitikmeot Inuit Association

- P. Emingak, Executive Director

Newmont (Hope Bay Mining Limited)

- W. Randall, Consultant

Participants:

See Appendix B to this document for a full listing of participants by venue.

Full Transcript Proceedings Available from: <ftp://nunavutwaterboard.org/WATER%20REGULATIONS/>

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## **REASONS FOR DECISION**

### **Executive Summary**

Subject to the commitments made by Aboriginal Affairs and Northern Development (AANDC) throughout the Nunavut Water Board's Public Hearing into the Draft Nunavut Waters Regulations, the Board concurs with the sections of the Draft Nunavut Waters Regulations made:

- 1) Pursuant to paragraphs 82(1)(a), establishing water management areas in Nunavut consisting of river basins or other geographic areas;
- 2) Pursuant to paragraph 82(1)(c), authorizing the use without a licence of waters in Nunavut, except in a national park, for the purpose, in the quantity, at the rate, during the period and subject to the conditions specified in the regulations; and
- 3) Pursuant to paragraph 82(1)(d), authorizing the deposit of waste without a licence in Nunavut, except in a national park, and specifying the conditions of the deposit, including the quantities, concentrations and types of waste that may be deposited. For the purpose, in the quantity, at the rate, during the period and subject to the conditions specified in the regulations.

Further, pursuant to paragraph 82(1)(f) and subsection 174(2) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA or Act), the Board is satisfied that the proposed classes of applications to be exempted from the requirement for a public hearing as set out in the Draft Regulations are consistent with the advice of the Board.

The Board understands that AANDC is conducting parallel consultations with Nunavut Tunngavik Incorporated and other stakeholders in parallel with the Minister seeking the Board's concurrence and advice on the Draft Nunavut Waters Regulations. Should the relevant sections of the Draft Regulations be revised as a result of these consultations, the Board appreciates AANDC's commitment to again seek the Board's concurrence and advice prior to the regulations being passed.

As a result of the Public Hearing, the Board further recommends to the Minister that AANDC, in consultation with Nunavut Tunngavik Incorporated, Regional Inuit Associations, and industry, be directed to establish a process, including a firm timetable, to address the issue of security "double-bonding" in Nunavut. The Board recommends the goal of this process be the

development of recommendations for a Nunavut-specific security regime that provides for securing the total outstanding reclamation liability for land and water combined in manner that ensures the execution of land and water reclamation is approached in a holistic way.

The Board also recommends that the Minister consider commencing a review of water-related fees in Nunavut using the review process set out in the *User Fees Act*. The review should give consideration to the objective of water conservation and Inuit values, as well as the varying complexity of licence applications and the wide range in the scale and scope of projects in Nunavut.

## **Part A: Matter Before the Board**

On March 4, 2011, the Nunavut Water Board (NWB or Board) received a letter dated February 22, 2011, from Indian and Northern Affairs Canada (INAC now AANDC) referring Draft Nunavut Waters Regulations (Draft Regulations) to the Board for review pursuant to subsections 82(1)<sup>1</sup> and 82(2)<sup>2</sup> of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA or Act). The Board also received the Nunavut Watershed Descriptions pursuant to section 17 of the Draft Regulations. The Draft Regulations and Nunavut Watershed Descriptions have been placed in the Board's Public Registry.

Subsection 51(2) of the Act permits the Board, where satisfied that it would be in the public interest to do so, to hold a public hearing in connection with any matter relating to its objects. The objects of the Board are set out in section 35 of the Act:

**35.** The objects of the Board are to provide for the conservation and utilization of waters in Nunavut, except in a national park, in a manner that will provide the optimum benefit from those waters for the residents of Nunavut in particular and Canadians in general.

In anticipation of the Draft Regulations and to facilitate the coordination of consultation on the Draft Regulations with Aboriginal Affairs and Northern Development Canada (AANDC), on December 20, 2009, the Board determined it was satisfied that it is in the interest of the public to hold a public hearing to determine if the Draft Regulations provide for the conservation and utilization of waters in Nunavut, in a manner that will provide the optimum benefit from those waters for the residents of Nunavut in particular and Canadians in general.

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<sup>1</sup> **82.** (1) The Governor in Council may, on the recommendation of the Minister, make regulations:

...

(f) on the advice of the Board or after consultation with the Board, exempting any class of applications in relation to licences from the requirement of a public hearing;

<sup>2</sup> **82.** (1) The Governor in Council may, on the recommendation of the Minister, make regulations

(a) establishing water management areas in Nunavut consisting of river basins or other geographical areas;

...

(c) authorizing the use without a licence of waters in Nunavut, except in a national park, for the purpose, in the quantity, at the rate, during the period and subject to the conditions specified in the regulations;

(d) authorizing the deposit of waste without a licence in Nunavut, except in a national park, and specifying the conditions of the deposit, including the quantities, concentration and types of waste that may be deposited;

...

(2) For the purposes of paragraphs (1)(a), (c) and (d), the recommendation of the Minister is subject to the concurrence of the Board.

The Board's decision to hold a public hearing is also consistent with giving due regard and weight to Inuit culture, customs and knowledge pursuant to section 33 of the Act.

## **Part B: The Board's Role in Regulation Making**

The legislative authority for making water regulations for Nunavut is found in:

- Article 10 of *Nunavut Land Claims Agreement* (NLCA)<sup>3</sup>
- Sections 82 and 174 of the NWNSRTA<sup>4</sup>, and
- Section 8 of the *Nunavut Land Claims Agreement Act* provides additional authority to make regulations necessary to implement the NLCA<sup>5</sup>.

The Board's role in making these regulations is set out in the NWNSRTA. In summary,

- Subsection 82(2) requires the recommendation of the Minister be “*subject to the concurrence of the Board*” for regulations that:
  - Establish water management areas
  - Authorize the use of waters without a licence, and
  - Authorize the deposit of waste without a licence;
- Section 82(2) of the Act requires the recommendation of the Minister be made “*after consultation with the Board*” for regulations that define waste for purposes of section 4 of the NWNSRTA; and
- Paragraph 82(1)(f) and section 174 of the Act require the Minister to seek the advice of or consult with the Board when establishing classes of licence applications that will be exempt from a public hearing.

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<sup>3</sup> See NLCA section 10.2.1:

All substantive powers, functions, objectives and duties of institutions referred to in Section 10.1.1 shall be set out in statute. Matters that do not touch upon the substantive powers, functions, objectives, duties, memberships ratios and manner of appointment of members of the institutions, may be implemented through regulation, but the discretions to implement through regulation shall in no way be construed as to broaden powers set out in Section 10.6.1 and Sections 10.7.1.

<sup>4</sup> See Appendix E to this decision

<sup>5</sup> See Nunavut Land Claims Agreement Act, SC 1993, c 29 states:

**8.** The Governor in Council may make such orders and regulations as are necessary for the purpose of carrying out any of the provisions of the Agreement.

NLCA section

## **Part C: History of the Board's Consideration of the Draft Nunavut Waters Regulations**

In order to facilitate the hearing process for the Draft Regulations, on December 20, 2009, the Board directed that in accordance with Rule 14 of the *NWB Rules of Practice and Procedure* (the Rules), the staff of the NWB hold a Pre-Hearing Conference (PHC) for the Draft Regulations.

On April 20, 2011, the Board acknowledged receipt of the Draft Regulations and provided notice that the Technical Meeting and Pre-hearing Conference (TM/PHC) would take place on May 31, 2011, at Nova Inn, in Iqaluit, NU and on June 2, 2011 at Chateau Nova, in Yellowknife, NT.

To further facilitate the hearing process, the Board invited interested persons to make written technical comments on the Draft Regulations to the Board to be received no later than May 20, 2011. Written submissions were received on or before May 20, 2011, from the following:

- Kitikmeot Inuit Association (KitIA)
- Nunavut Planning Commission (NPC)
- NWT and Nunavut Chamber of Mines (Mining Industry Submission)
- Agnico Eagle Mines Ltd.
- Newmont/Hope Bay Mining Ltd. (Newmont Mining Corporation)
- Peregrine Diamond Ltd.
- Sabina Gold and Silver
- Nassituq Corp.
- Environment Canada
- Transport Canada
- Department of National Defence

On May 26, 2011, correspondence was received from Nunavut Tunngavik Incorporated (NTI) advising that in association with the Regional Inuit Associations (RIA), NTI was in the process of bilateral (Crown/Inuit) consultation with INAC (now AANDC) regarding the design and wording of the Draft Regulations pursuant to consultation guarantees in section 2.6.1 of the NLCA. Due to the bilateral nature of this consultation process, NTI advised the Board that it intended to attend at least some of the NWB's technical meetings and hearing, but not to participate actively or make submissions. NTI representatives attended the TM/PHC at both locations.

On May 30, 2011, the NWB received a written submission from the Kivalliq Inuit Association (KivIA). The Board provided copies of the KivIA submission to the parties at the TM/PHC.

The TM/PHC was held on May 31, 2011, in Iqaluit, NU and on June 2, 2011 in Yellowknife, NT. In total, 47 people from 21 organizations representing Inuit, departments of the governments of Canada and Nunavut, and industry attended the PHC. A complete list of participants is provided in Appendix A.

The TM provided an informal meeting for all parties, to discuss issues raised during the technical review of the Draft Regulations. AANDC's presentation of the Draft Regulations has been placed on the Board's public registry at the link set out at the end of this section of the Reasons for Decision. In each location, immediately following the TM, the PHC was held to address the following issues to aid in the Board's consideration of the Draft Regulations:

- Identification of interested parties;
- Presentations from interested parties;
- List of issues to be dealt with at the Hearing;
- Desirability of amending the Draft Regulations for the purpose of clarification;
- Timetable for the pre-Hearing exchange of information;
- Procedures for the Hearing;
- Identification of any other matters that may assist in the simplification and disposition of the Hearing.

At the conclusion of the TM, AANDC agreed to provide by June 23, 2011, a written response to the issues raised in the written submissions and at the TM. The response was received on June 20, 2011.<sup>6</sup>

On June 29, 2011, the NWB issued the PHC Decision. Formal notice of the Public Hearing was given on June 29, 2011, and provided to the Board's distribution list and published in News North, Nunatsiaq News, Kivalliq News.

Based on the Board's role in making regulations pursuant to the NLCA and the NWNSRTA, the prior written submissions of the parties and the information exchanged at the TM/PHC, the Board directed that the parties address issues in written submissions and presentations to the Board in the following categories and order:

- Issues related to sections of the Draft Regulations requiring the concurrence of the Board pursuant to section 82(2) of the Act:

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<sup>6</sup> See AANDC Submission, Draft Nunavut Water Regulations - Responses to the Questions Raised during the Nunavut Water Board's Technical\Pre-hearing Conference Meetings in Iqaluit and Yellowknife the Week of May 30, 2011, June 20, 2011. [Hereinafter "AANDC Responses to Questions".]

- Authorizing the use of waters and the deposit of wastes without a licence (Draft Regulations sections 1 through 6; schedules 1, 2 and 3, with emphasis on thresholds in column 3)
  - Establishing water management areas (Draft Regulations section 17 and schedule 4)
- Issues related to sections of the Draft Regulations requiring advice of and/or consultation with the Board pursuant to section 82(3) and 174(2) of the Act:
  - Exempting classes of applications from the requirement for a public hearing (Draft Regulations section 9, in conjunction with sections 7 and 8; schedules 1, 2 and 3 with emphasis on thresholds in columns 4 and 5)
  - Regulations to inform the definition of waste in section 4 of the Act  
(None are proposed pursuant to section 82(1)(b) of the Act)
- Other issues arising from the Technical Meetings:
  - Reclamation security (Draft Regulations section 10)
  - Licensing fees (Draft Regulations sections 11 and 12)
  - Reporting and maintenance of records issues (Draft Regulations sections 13 through 16)
  - Coming into force (Draft Regulations section 18)
- Other issues identified by the Parties

Written submissions for the Public Hearing were received on or before August 26, 2011, from the following:

- Nunavut Tunngavik Incorporated (NTI)
- Kitikmeot Inuit Association (KitIA)
- Kivalliq Inuit Association (KivIA)
- Nunavut Planning Commission (NPC)
- NWT and Nunavut Chamber of Mines (Mining Industry Submission)
- Newmont/ Hope Bay Mining Ltd. (Newmont Mining Corporation)
- Department of National Defence

The Hearing was conducted in three locations, Iqaluit on September 13, 2011, Rankin Inlet on September 15, 2011, and Cambridge Bay on September 16, 2011. A list of participants at the Public Hearing is provided in Appendix B.

A complete list of submissions and correspondence on this matter is provided in Appendix C. A list of Exhibits from the Public Hearing is provided in Appendix D. All listed submissions, correspondence, Exhibits and transcripts of the Public Hearing have been placed on the Board's public registry and are available from the NWB's ftp site using the access username of "public"

and the password of “registry” (without the quotes) at the following link:  
<ftp://nunavutwaterboard.org/WATER%20REGULATIONS/>.

## **Part D: Public Hearing Issues**

### **1. Issues related to sections of the Draft Regulations requiring the concurrence of the Board pursuant to section 82(2) of the Act**

#### **a) Authorizing the use of waters and deposit of wastes without a licence**

The Board considered the Draft Regulations sections 1 through 6, and schedules 1, 2 and 3, with emphasis on the thresholds in Column 3 of the schedules establishing water use authorizations and waste disposal authorizations without licences.

The primary purpose of these sections of the Draft Regulations is to establish an efficient scheme for the Board’s approval of minimal uses of water and deposits of waste into water (hereafter referred to as “minimal uses”). Any such scheme must satisfy the requirement for all but domestic and emergency uses of water to be approved by the Board as set out in section 13.7.1 of the NLCA:

With the exception of domestic or emergency use of waters as set out in Section 5 of the Northern Inland Waters Act RSC 1985, c. N-25, no person may use water or dispose of waste into water without the approval of the NWB.

The NLCA requirement for Board approval of minimal uses is an important distinction between the water management schemes established pursuant to the *Northwest Territories Waters Act*. The *Northwest Territories Waters Act* exempts minimal uses from the requirement for a licence through regulations pursuant to sections 33(1)(m) and (n). Under this scheme, the exemption from the requirement for a licence effectively removes the requirement for these uses to be approved by the Northwest Territories Water Board. In 2002, the Board rejected this approach as inconsistent with the NLCA by exercising its jurisdiction pursuant to subsection 173(3) of the NLCA to order that the provisions under paragraph 33(1)(m) or (n) of the *Northwest Territories Waters Act* allowing unlicensed minimum uses ceased to apply in relation to Nunavut.<sup>7</sup>

However, the Board recognizes that in certain circumstances the licensing process in place for Type B licences may be more onerous than is necessary to regulate minimal uses. In the Board’s view the simplified process for Board authorization of minimal uses set out in the Draft Regulations is both consistent with section 13.7.1 of the NLCA and consistent with sections 13.7.3, 13.7.4 and 13.7.5 of the NLCA which permit the Board

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<sup>7</sup> SOR/2002-253 dated July 12, 2002.

to exempt certain classes of applications from public hearing, deal summarily with applications that do not require public hearings and to delegate authority to approve applications which do not require public hearings to administrative staff. In concluding that the process is consistent with the NLCA, the Board notes that several parties welcomed the approach.<sup>8</sup>

The Board did however receive comments that the proposed upper threshold for approval of water use without a licence set out in Schedule 2 of the Draft Regulations at 50m<sup>3</sup>/day is too low. In a joint submission, the NWT & Nunavut Chamber of Mines, the Prospectors & Developers Association of Canada and the Mining Association of Canada (Mining Industry Submission) recommends an increase in the threshold for water use without a licence to 100m<sup>3</sup>/day before a Type B licence is required, consistent with the thresholds for use without a licence in place in both the Yukon and the Northwest Territories.<sup>9</sup>

Similarly, the Newmont Mining Corporation's written submission states:

The draft schedule 2 (licensing criteria for use of water) proposes a minimum threshold of 50 cubic metres of water for a Type B licence, and 300 cubic metres of water for a Type A licence. The proposed thresholds will have the effect of requiring relatively small and short term exploration programs that are conducting early-stage drilling to always require a Type B licence. These thresholds are considerably lower than other northern Canadian Jurisdictions. Additionally, the changing nature of an exploration program would make use of Type A Water Licenses challenging due to the more frequent requirement for amendment. We would be interested in better understanding the rationale for the much lower threshold.<sup>10</sup>

In response to these submissions, AANDC advised the Board that the decision to set the threshold at 50m<sup>3</sup> was the result of a detailed historical review of Type B licence applications in Nunavut. According to the analysis, 35% of projects historically requiring a Type B licence would qualify to apply for an approval for use without a licence on the water use threshold of 50m<sup>3</sup>/day.<sup>11</sup> Those activities, primarily drilling, that fell between 50m<sup>3</sup> and 100m<sup>3</sup>/day of water use required a Type B licence due to waste disposal and thus would not benefit from an increase in the water use threshold.<sup>12</sup>

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<sup>8</sup> See for example the Submission to the Nunavut Water Board in Relation to the Proposed Nunavut Water Regulations, dated August 25, 2011, submitted by the the NWT & Nunavut Chamber of Mines, the Prospectors & Developers Association of Canada and the Mining Association of Canada, page 3.

[Hereinafter "Mining Industry Submission".]

<sup>9</sup> See Mining Industry Submission, page 3.

<sup>10</sup> Newmont Mining Corporation Submission, dated August 25, 2011, page 2.

<sup>11</sup> See AANDC, Gilles Binda, Transcript, Vol. 3, page 26-28, lines 25-12.

<sup>12</sup> Ibid.

The Board understands that in many cases, the limiting threshold for exploration programs will not be the water use threshold, but rather the threshold for the deposit of waste authorized without a licence set out in Schedule 3. For mining exploratory work, the proposed threshold is the deposit of sewage to a sump. Accordingly, where there is waste from drilling, a Type B licence will be required for the project. In the Board's view it is appropriate for drilling waste to trigger the requirement for a Type B licence.

At the Hearing, AANDC asked the Mining Industry to provide the Board with specific examples of the types of projects that might be disadvantaged by the lower thresholds proposed for Nunavut relative to the Yukon and Northwest Territories.<sup>13</sup> Unfortunately, the examples provided focused primarily on potential future scenarios that could result from changes in exploration techniques in Nunavut.<sup>14</sup>

Taking into consideration the extensive analysis of historical Nunavut-specific projects that was undertaken to develop the thresholds for authorized use without a licence, and in the absence of relevant examples to the contrary, the Board does not have sufficient evidence to support (or formulate) a recommendation to adjust the upper threshold for water use authorized without a licence in the Draft Regulations. The Board notes that revisions to the schedules are possible over time should the nature of projects in

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<sup>13</sup> See AANDC, Gilles Binda, Vol. 1, pages 50-52, lines 15-5.

<sup>14</sup> Newmont Mining Corporation, Ms. Randall, Transcript, Vol. 3, pages 49-50, lines 3 to 20:

So one of the questions that they were asked were what the benefits would be to increasing the threshold for unlicensed use of water from 50 to 100 cubic metres, and some of the information that was provided by them was that the proposed thresholds are based on historical sampling, and that does not necessarily work well for a future scenario in Nunavut that will likely look quite different than it does today. These currently proposed thresholds are likely to create a number of problems for both workload at the Water Board, as well as for exploration companies as mining increases in the territory. It is also unlikely that these can be looked at in isolation of the thresholds for waste in schedule 3, and if the 100-metre-per-day limit has any potential merit, these draft regulations may present the only realistic opportunity to adopt it. So they are -- would really appreciate that -- that consideration.

One of the examples given was the building of an ice airstrip or winter road construction where a more generous scope to use water without a licence could be important. Likewise for the construction of winter ice crossings of rivers, and while not necessarily in widespread use, ice airstrips have played an important role in the advancement of certain mineral exploration and development initiatives situated at northern latitudes in Canada. It must be recognized that there are important differences between the three northern territories, nonetheless the fact the 100-metre-per-day limit has been in place for many years in both Yukon and the NWT presumably on an environmentally sound basis should also be given careful consideration before that limit is rejected. It is important to also recognize that exploration techniques are continually evolving and could conceivably identify new methods where the ability to use up to 100 cubic metres per day without a licence would be advantageous. So those were the comments I have been provided with regard to that question.

Nunavut change and there is sufficient evidence that a higher threshold for water use without a licence is warranted.

The Board is also satisfied that the application information required, terms and conditions for both water use and the deposit of waste without a licence, and the related reporting requirements are sufficient to meet the objects of the Board while providing for a more efficient approval scheme.

On a related point, AANDC has responded to feedback regarding the need to include the physical location of the deposit of waste in the application for an authorization to deposit waste without a licence, and the subsequent reporting and will include this requirement in the Draft Regulations.<sup>15</sup> The Board supports this addition.

The Board also supports AANDC's commitment to clarify the Draft Regulations authorizing minimal uses without a licence by replacing references to the term "unlicenced uses" with the term "use without a licence" and "deposit of waste without a licence" throughout.<sup>16</sup>

#### **b) Establishing water management areas**

The Board considered the Draft Regulations section 17 and Schedule 4 which establish 65 water management areas for Nunavut. This is a significant improvement over the four very large water management areas established for the same geographic area under the *Northwest Territories Waters Regulations*.

The Board agrees with AANDC that the early establishment of well defined sub-drainage watershed water management areas, based on the Atlas of Canada and Water Survey of Canada contouring, in the Draft Regulations provides a useful tool for the Board as it develops water management strategies for Nunavut and supports future development of watershed-based regulation of water in Nunavut.<sup>17</sup> The Board also believes the early designation of watershed management areas will better support coordination with land use planning in Nunavut. The Board acknowledges and appreciates AANDC's commitment to provide the mapping information in electronic format (i.e. "shape files") upon the regulations coming into force as this will greatly assist the Board and project proponents.<sup>18</sup>

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<sup>15</sup> See AANDC, Gilles Binda, Vol. 3 page 21, lines 5-15.

<sup>16</sup> See AANDC, Gilles Binda, Vol. 3 page 20, lines 7-19.

<sup>17</sup> AANDC, Gilles Binda, Transcript, Vol. 1, pages 26-28, lines 10-6.

<sup>18</sup> AANDC, Gilles Binda, Transcript, Vol. 3, pages 26, lines 11-14.

## 2. Issues related to sections of the Draft Regulations requiring advice of and/or consultation with the Board pursuant to sections 82(3) and 174(2) of the Act

### a) Exempting classes of applications from the requirement for a public hearing

The Board reviewed the Draft Regulations section 9, in conjunction with sections 7 and 8, and Schedules 1, 2 and 3 with emphasis on thresholds in column 4 and 5. These sections and schedules effectively establish the classes of application, including minimal uses authorized without a licence and Type B licence applications, exempt from the requirement for a public hearing. The Board is satisfied that these classes of applications are appropriately exempted from the requirement for a public hearing. The Board further notes, that pursuant to section 51(2) of the NWNSRTA, the Board may hold a hearing on any matter related to its objects when it is in the public interest to do so.<sup>19</sup>

### b) Regulations to inform the definition of waste in section 4 of the Act.

Section 82(1)(b) of the NWNSRTA provides for making of regulations to better define the meaning of waste in section 4 of the NWNSRTA.<sup>20</sup> At this time the Draft Regulations do not propose regulations in this area. The Board is satisfied that the definition contained within the NWNSRTA is sufficient. In practice, the Board commonly relies on expertise from a range of sources and expertise in this area, including the Department of Fisheries, the *Metal Mining Effluent Regulations*,<sup>21</sup> and Canadian Council of Ministers of the Environment (CCME) guidelines to add context and substance to the definition of waste.

## 3. Other issues arising from the technical meetings:

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<sup>19</sup> Section 51 of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

**51.** (1) Applications in relation to licences for which no public hearing is required shall be dealt with summarily by the Board.  
(2) Notwithstanding subsection (1), the Board may, where satisfied that it would be in the public interest to do so, hold a public hearing in connection with any matter relating to its objects.

<sup>20</sup> Section 82(1)(b) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* states:

82(1) (b) for the purposes of paragraphs (b) to (d) of the definition “waste” in section 4,  
(i) specifying substances and classes of substances,  
(ii) prescribing quantities or concentrations of substances and classes of substances, and  
(iii) describing treatments of or changes to water;

<sup>21</sup> SOR/2002-222.

### a) Reclamation security

The Board understands that AANDC's objective at this time for section 10 of the Draft Regulations is to leave the section on security unchanged from the *Northwest Territories Waters Regulations*.<sup>22</sup> The Board also notes that AANDC confirmed at the Hearing that a drafting error in section 10(2) of the Draft Regulations where the word "must" appears will be corrected and replaced with the word "may" as it currently appears in the *Northwest Territories Waters Regulations*.<sup>23</sup>

Several parties provided submissions to the Board expressing concern about maintaining the status quo in the security-related section of the Draft Regulations. In particular, the Kitimeot Inuit Association (KitIA) provided the Board with a detailed written submission setting out two main issues related to security: the first is what is commonly referred to as "double bonding" or "overbonding"; and the second is the matching of criteria the Board may consider pursuant to section 10 of the Draft Regulations to determine the amount of security with the Minister's authority to apply such security under subsection 76(2) of the NWNSRTA. Each of these issues is considered by the Board below.<sup>24</sup> The Kivalliq Inuit Association (KivIA) provided a written submission fully supporting the comments made by KitA in their submission.<sup>25</sup>

#### ***Double Bonding***

The issue of "double bonding", occurs when security for land and water reclamation is ordered to be held pursuant to a water licence and is also required by another party with an interest in the land, thus requiring a project proponent to provide security in an amount that likely exceeds the required reclamation security for land and water assuming the reclamation takes place in a holistic manner. This issue has been well canvassed in a series of decisions by the NWB.<sup>26</sup> The Board agrees with KivIA that "double bonding" has occurred in the context of many developments in Nunavut, and that it is a significant and consistent issue arising in large mining developments in Nunavut, including the Doris North mine and the Meadowbank mine.<sup>27</sup>

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<sup>22</sup> See Exhibit 1, AANDC Nunavut Waters Regulation (Draft), Presentation at NWB Public Meetings, September 2011, at slide 11. [Hereinafter AANDC Presentation.]

<sup>23</sup> See Exhibit 1, INAC Presentation, at slide 11 and Gilles Binda, Transcript, Vol. 3, page 23, lines 15-21.

<sup>24</sup> See Kitikmeot Inuit Association, Submission to Nunavut Water Board Hearing on the Draft Nunavut Water Regulations of the Kitimeot Inuit Association, August 26, 2011. [Hereinafter KitIA Written Submission.]

<sup>25</sup> Kivalliq Inuit Association, Review of Draft Nunavut Water Regulations, August 31, 2011. [Hereinafter KivIA Submission.]

<sup>26</sup> Appendix A, of KivIA's Written Submission provides an excellent overview of the NWB's decisions related to the issue of security and "double bonding".

<sup>27</sup> See KivIA Written Submission, at page 6.

KivIA, in their written submission also emphasized the importance of this issue and the lack of progress on resolving the matter:

KivIA is particularly concerned about the “double bonding” issue and believe that this is something that needs urgent and serious attention. Over the last several years, a significant amount of energy has gone into efforts to resolve this issue – or at least find a workable way around the problem – but we have been unsuccessful in our discussions with AANDC. We urge you give serious consideration to this issue and the comments made by KitIA in their submission as a whole.<sup>28</sup>

The same issue and desire for resolution was raised by the Mining Industry in their submission:

Double bonding occurs where a licensee must provide financial security to more than one payee to address the same or related reclamation requirement. Given the significant amounts of security that may be required for large-scale mining operations, double bonding has the potential to act as a significant deterrent to the investment necessary for the development of the mineral resources in Nunavut. It could, therefore, put the territory at a competitive disadvantage compared to other jurisdictions throughout the world. Several mining companies have been running into this problem for a number of years.

Industry was hopeful that the long-standing concern with double bonding could be addressed, at least in part, by incorporating the appropriate provisions in these proposed Nunavut regulations; however, during the technical preconference meetings held this spring, Aboriginal Affairs indicated that the department does not intend to address this matter through the rough draft regulations and has restated that today, but rather through a pan-northern approach or possibly through new legislation or elsewhere, such as under the Mining Act.

Given the important differences that exist between the regulatory regimes now established in the Yukon, Northwest Territories, and Nunavut, the industry questions whether a pan-northern approach is feasible. If this approach is adopted, it will lead this longstanding and potentially damaging issue unresolved in Nunavut -- for a prolonged period of time. Thereby adversely affecting the exploration for and development of the territories' unrealized mineral potential. Rather we believe that the issue of double bonding should be addressed immediately under these proposed regulations, as there are a number of

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<sup>28</sup> KivIA Written Submission, page 6.

projects coming forward in the next year.<sup>29</sup>

The Board understands that there is a range of proposals for addressing the double bonding issue. One set of recommendations offers a range of shorter and longer term approaches, including development of a bilateral understanding between the Crown and NTI and statutory amendments.<sup>30</sup> The Mining Industry focuses on revising the Draft Regulations to allow the Board to consider other agreements in place regarding security.<sup>31</sup>

AANDC recognizes the importance of this issue and the need to address it:

The security issue we have heard a lot. There are parties that share the views that many of you here today have on this issue. It's an important issue. We realize that, but given the pan-territorial nature of the issue, the interconnectivity of the authorities, the roles, the responsibilities that are outlined in different land claims, the legislation, regulation, as well as the different views that people have on this and what are the desired outcomes, the department does not believe it is prudent to try to address this in the regulations at this point. So the department is committed to reviewing the broader... securities issue and that it will be consulting with affected stakeholders in the future on this...we know it's a problem. We are going to address it. It's just not going to be done in these regulations right now.<sup>32</sup>

However, AANDC advised the Board that there is currently no defined process or timeline to address the issue.<sup>33</sup>

While not specifically set out in the Draft Regulations as requested by the Mining Industry, as KitIA notes in its submission, section 76 of the NWNSRTA gives the Board discretion to order security, with the limit on the Board's ability to order the amount of security bounded to an upper amount based on the criteria listed in the regulations.<sup>34</sup> The Board has clearly communicated in its decisions that it is open to evidence to support a lower amount of security; however, the parties holding the security must demonstrate to the Board that it will approach land and water related reclamation holistically:

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<sup>29</sup> Mining Industry Submission, Elizabeth Kingston, Transcript, Vol. 1, pages 43-45, lines 24-11. For a similar view on taking a pan-northern approach, see also Wendy Randall, Newmont Mining Corporation, Transcript, pages 45-46, lines 25-26.

<sup>30</sup> See KitIA Written Submission, Appendix B: NTI Options to Resolve the Double Bonding Issue.

<sup>31</sup> See Mining Industry Written Submission, page 2.

<sup>32</sup> AANDC, Gilles Binda, Vol. 1, page 29, lines 5-24.

<sup>33</sup> See AANDC, Gilles Binda, Vol. 3, page 34, lines 1 -16.

<sup>34</sup> See KitIA Written Submission, page 5.

...Absent evidence of agreement between various holders of security, in this case INAC and KIA, on how total financial security for final reclamation will be such that the total outstanding reclamation liability for land and water combined is secured, and will be executed such that land and water related reclamation will be approached holistically, the Board is not prepared to split land and water security.<sup>35</sup>

Given the Board's discretion to lower the security required under the current regulatory regime, and the complexity of an express regulatory solution, on balance the Board believes that accepting the status quo on security in order to move forward with implementing the positive changes in the Draft Regulations, such as authorizations for minimal uses without a licence and establishing water management area, is the preferable course of action. However, the Board shares the parties' interest in having this resolved, with KitIA stating:

It is probably not realistic to expect that [double bonding] can be resolved in the short time before draft regulations are finalized. What KIA does ask of the Board or AANDC is a specific time table and some kind of a plan for addressing this problem. We request that the Board highlight the importance of finding a solution to this problem in its report to the Minister after this hearing.<sup>36</sup>

Newmont Mining Corporation also stated:

As pointed out in correspondence from a number of interested parties, this [double bonding] is not a pan-northern issue. Furthermore, Aboriginal Affairs and Northern Development Canada has not provided any comfort to the industry by way of indicating how quickly or in what manner this will be dealt with. It would be helpful to understand why Aboriginal Affairs and Northern Development Canada is insisting on this approach and appears to be uninterested in exploring other options that have the potential to remedy the situation in a more timely manner.<sup>37</sup>

Accordingly, the Board encourages AANDC to establish a process and firm timetable for a resolution of the double bonding issue and communicate with the parties about this as soon as possible. Further, in view of the comprehensive land claims agreement in Nunavut, and the differences between Nunavut and other Territories, a pan-northern approach may not be appropriate. The Board encourages AANDC to look for a Nunavut-specific resolution that could be achieved in a more timely way.

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<sup>35</sup> See Record of Proceeding/Reasons for Decision for 2AM-MEA0818 Issued on June 9, 2008 for Type "A" Water Licence to Agnico-Eagle Mines Limited, page 27.

<sup>36</sup> KitIA, Paul Emingak, Transcript, Vol. 3, pages 40-41, lines 24-6.

<sup>37</sup> Newmont Mining Corporation, Wendy Randall, Transcript, Vol. 3, pages 45-46, lines 25-11.

***Criteria in setting security in s. 10 to allow Board to include consideration of compensation claims when setting security***

The Board agrees with KivIA that it is appropriate to match the Board's authority under the Draft Regulations to order an amount of security with the Minister's authority pursuant to subsection 76(2) to apply security to compensation obligations under section 13 of the NWNSRTA.<sup>38</sup> In principle the Board supports KitIA's recommendation to amend subsection 10(1) of the Draft Regulations to permit the Board to consider "compensating, fully or partially, a person, included the designated Inuit organization, identified in subsection 76(2)(a) of the Act" when setting security.<sup>39</sup>

If the addition of this paragraph can be approved and supported by all parties and does not delay moving forward with the Draft Regulations, the Board is supportive of amending the Draft Regulation accordingly. However, the Board also recognizes that this moves away from the approach of maintaining the status quo for security until broader issues such as "double bonding" are addressed.

**b) Licensing fees**

Pursuant to sections 11 and 12 of the Draft Regulations, there are no licence fees payable by a designated Inuit organization or Inuit for the right to use waters on, in, or flowing through Inuit-owned lands. KivIA has identified a second issue with section 12 of the Draft Regulations which establish water use fees payable to the Crown. KivIA identified in its written submission that these fees have the potential to interfere with an Inuit land owner's attempts to exercise exclusive rights to water use on Inuit Owned Land (IOL) pursuant to Article 20.2.2.<sup>40</sup> The Board understands that AANDC is committed to addressing this issue with the Designated Inuit Organization, Regional Inuit Associations and the Board prior to the prepublication of the Draft Regulations.<sup>41</sup>

The NWB does not share in the revenues generated by licence or water use fees and views this issue primarily as a legal matter between the Crown and Inuit Land Owners. However, the Board administers water fees on behalf of the Crown and thus has an interest in ensuring that a fee scheme specific to IOL is sufficiently well-defined to provide clarity in its application and to provide for efficient administration.<sup>42</sup>

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<sup>38</sup> See KitIA Written Submission, page 7.

<sup>39</sup> KitIA Written Submission, page 9.

<sup>40</sup> See KivIA Written Submission, pages 9-11.

<sup>41</sup> See AANDC, Gilles Binda, Vol. 2, pages 30-31, lines 15-19.

<sup>42</sup> For examples of the complexity of issues that could arise when administering a separate scheme for fees on IOL, see the exchange between Dionne Filiault, NWB and Gilles Binda, AANDC, at Transcript, Vol. 1, pages 37-40, lines 17-12.

More fundamentally, the Board encourages all parties to ensure that fee schemes consider the link between water use fees and water conservation and utilization, as well as Inuit culture, customs and values. The Board understands that changes to the fees for a water licence application and for water use were not considered when sections 11 and 12 of the Draft Regulations were developed primarily due to the length of time it might take to complete a review of any proposed fee changes pursuant to the *Federal User Fees Act*. Given the varying complexity of licence applications and the wide range in the scale and scope of projects in Nunavut, the Board recommends that the Minister consider commencing a review of water related fees in Nunavut as may be required under the *User Fees Act*. The results of this review could inform a subsequent amendment to the water regulations for Nunavut.

**c) Reporting and maintenance of records issues, and**

The Board supports AANDC's proposal to amend section 16 of the Draft Regulations to allow proponents with an unmanned station or site to provide the information that an inspector would need by having a telephone number available at that site to allow the inspector to obtain the information required at that time.<sup>43</sup> The Board also supports AANDC's proposal to add electronic mail as a way of providing information to an inspector.<sup>44</sup>

The Board also agrees with AANDC's position on retaining a 60 day extension for annual reports. As stated by AANDC, there is currently no provision for extensions in the *Northwest Territories Waters Regulations* and the maximum 60 day extension assists inspectors with completing their work during the summer season.<sup>45</sup>

**d) Coming into force.**

The Board understands the new regulations will come into force immediately upon approval by the Governor in Council and registration. In order to ensure a smooth implementation process, particularly with regard to authorizations without a licence, it is essential that resources be directed immediately to preparing for implementation.

Many of the submissions emphasize the need for guidance documents, and AANDC relies on the availability of guidance documents in many of its responses to issues raised through the technical review process.<sup>46</sup> Accordingly, the Board strongly recommends to the Minister that resources be made available now to begin the development of the

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<sup>43</sup> See AANDC Gilles Binda, Vol. 3, page 23, lines 22-23.

<sup>44</sup> See AANDC Gilles Binda, Vol. 2, page 228, lines 15-24.

<sup>45</sup> See AANDC Gilles Binda, Vol. 3, page 24, lines 1-19.

<sup>46</sup> See AANDC Responses to Questions.

required resource materials and processes to ensure the greatest possible benefit is gained from the new regulatory regime and that potential delays caused by information gaps and the novelty of the new regime are minimized.

#### **4. Other issues identified by the parties.**

AANDC responded to many of the comments from the parties received as a result of the Technical Meeting.<sup>47</sup> In addition, as set out in preceding sections, AANDC committed to several amendments to the Draft Regulations during the course of the Public Hearing.

The Board wishes to thank AANDC and the parties for their participation in a very collaborative process between government, regulators, industry and public in the development of these Draft Regulations. The Board looks forward to continued cooperation in the finalization of the Draft Regulations and in preparing for and implementation of the regulations once passed. The Board also looks forward to continued collaboration in addressing the security-related issues discussed in preceding sections.

#### **Part E: Concurrence Decision of the Board**

Subject to the commitments made by AANDC in their Written Response to Questions and at the Public Hearing, pursuant to subsection 82(2) of the NWNSRTA, the Board concurs with the sections of Draft Regulations made:

- 1) Pursuant to paragraphs 82(1)(a), establishing water management areas in Nunavut consisting of river basins or other geographic areas;
- 2) Pursuant to paragraph 82(1)(c), authorizing the use without a licence of waters in Nunavut, except in a national park, for the purpose, in the quantity, at the rate, during the period and subject to the conditions specified in the regulations; and
- 3) Pursuant to paragraph 82(1)(d), authorizing the deposit of waste without a licence in Nunavut, except in a national park, and specifying the conditions of the deposit, including the quantities, concentrations and types of waste that may be deposited. For the purpose, in the quantity, at the rate, during the period and subject to the conditions specified in the regulations.

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<sup>47</sup> See AANDC Response to Questions.

The Board understands that AANDC is conducting parallel consultations with Nunavut Tunngavik Incorporated and other stakeholders in parallel with the Minister's consultation with the NWB.<sup>48</sup> Should the relevant sections of the Draft Regulations be revised as a result of these consultations, the Board appreciates AANDC's commitment to again seek the Board's concurrence prior to the revised regulations being passed.<sup>49</sup>

## **Part F: Consultation Recommendations of the Board to the Minister**

Subject to AANDC's commitments made throughout this Public Hearing process, pursuant to paragraph 82(1)(f) and subsection 174(2) of the NWNSRTA, the Board is satisfied that the proposed classes of applications to be exempted from the requirement for a public hearing as set out in the Draft Regulations are consistent with the advice of the Board.

Again, the Board understands that AANDC is conducting parallel consultations with Nunavut Tunngavik Incorporated and other stakeholders in parallel with the Minister's consultation with the NWB.<sup>50</sup> Should relevant sections of the Draft Regulations be revised as a result of these consultations, the Board appreciates AANDC's commitment to again consult with the Board prior to the revised regulations being passed.<sup>51</sup>

## **Part G: Other Recommendations of the Board to the Minister**

To reduce barriers to development in Nunavut, the Board strongly recommends to the Minister that AANDC, in consultation with Nunavut Tunngavik Incorporated, Regional Inuit Associations, and industry, be directed to establish a process, including a firm timetable, to address the issue of security "double-bonding" in Nunavut.

The Board recommends the goal of this process be the development of recommendations for a Nunavut specific security regime that provides for securing the total outstanding reclamation liability for land and water combined in manner that ensures the execution of land and water reclamation is approached in a holistic way. Upon reaching agreement on the key elements security regime, priority should be given to amending the existing security related section of the regulations pursuant to paragraph 82(1)(i) of the NWNSRTA as needed to support the implementation of the recommendations. In addition, if criteria to require security to provide for compensation under section 13 of the NWNSRTA are not provided for in the regulations as

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<sup>48</sup> See Exhibit 1, AANDC Presentation, at slide 13.

<sup>49</sup> See AANDC, Gilles Binda, Transcript, Vol. 2, pages 45-46, lines 22-22.

<sup>50</sup> See Exhibit 1, AANDC Presentation, at slide 13.

<sup>51</sup> See AANDC, Gilles Binda, Transcript, Vol. 2, pages 45-46, lines 22-22.

passed, these criteria should also be addressed to ensure that all aspects of section 76 of the NWNSRTA are considered in the determination of security.

The Board also recommends that the Minister consider commencing a review of water-related fees in Nunavut in accordance with the requirements of the *User Fees Act*. To adequately reflect Nunavut-specific issues, the review should give consideration to the objective of water conservation and Inuit values, as well as consider the varying complexity of licence applications and the wide range in the scale and scope of projects in Nunavut.

## **APPENDIX A – List of Participants for the Technical Meetings and Pre-Hearing Conferences**

Glen Stephens	Indian and Northern Affairs Canada
Gilles Binda	Indian and Northern Affairs Canada
Ryan Cannon	Indian and Northern Affairs Canada
Tanya Trenholm	Indian and Northern Affairs Canada
Jim Rogers	Indian and Northern Affairs Canada
Pierre-Luc Lavoie	Indian and Northern Affairs Canada
Barb Thomson	Nasittuq Corporation
Christopher Tickner	Nunavut Planning Commission
Allison Dunn	Environment Canada
Mary Kelly	Environment Canada
Naeem Mughal	Government of Nunavut
Nigel Qaumariaq	Qikiqtani Inuit Association
Jeannie Ehaloak	Nunavut Tunngavik Incorporated
Dionne Filiatrault	Nunavut Water Board
Phyllis Beaulieu	Nunavut Water Board
Catherine Emrick	Nunavut Water Board
George Hakongak	Nunavut Tunngavik Incorporated
Luigi Torretti	Kitikmeot Inuit Association
Arlen Foster	Fergeson Simeck and Clark
Elizabeth Kingston	Chamber of Mines
Jennifer Spencer	Dillon Consulting

Douglas Craig	Department of National Defence
Larry Connell	Agnico-Eagle Mines Ltd.
Steven Moore	EBA Consulting
Patrick Clancy	Government of Nunavut
John Laitin	Sabina Gold and Silver Corp.
Robert Chapple	Government of Nunavut
Saleem Sattar	Department of National Defence
Wendy Randall	Hope Bay Mines Limited
Stephanie Autut	Nunavut Impact Review Board
John Donihee	Kitikmeot Inuit Association
Saz Yaqzan	Geotarget
Rachel McDonald	Department of National Defence
Robert Esser	Nunavut Tunngavik Incorporated
Ben Kogvik	Nunavut Water Board
Robin Aitken	Indian and Northern Affairs Canada
Leslie Payette	Indian and Northern Affairs Canada
Elizabeth Sherlock	Sabina Gold and Silver Corp.
Eva Paul	Indian and Northern Affairs Canada
Allison Fleischer	Indian and Northern Affairs Canada
David Walcott	Department of National Defence
Tom Hoefer	Chamber of Mines
Adam Vivian	Chamber of Mines
Pamela Strand	Shear Diamonds Ltd.
Manik Duggar	Northern Project Management Office

David Jessiman Indian and Northern Affairs Canada  
Elroy Ridlington News North

## **APPENDIX B – List of Participants for the Public Hearings**

Bill Westwell	Government of Nunavut
Justin Buller	Aboriginal Affairs and Northern Development
Elizabeth Kingston	Chamber of Mines
Paul Clow	City of Iqaluit
Pierre-Luc Lavoie	Aboriginal Affairs and Northern Development
Paula Smith	Environment Canada
David Abernethy	Aboriginal Affairs and Northern Development
Jeannie Haloak	Nunavut Tunngavik Incorporated
Casey Lessard	News North
Eva Paul	Aboriginal Affairs and Northern Development
Froydis Reinhart	Government of Nunavut
Jamal Shirley	Nunavut Research Institute
Damien Cote	Department of Justice
Mosha Cote	Nunavut Research Institute
Johann Pelage	Cannor
Tatjana Milogevic	Aboriginal Affairs and Northern Development
Gilles Binda	Aboriginal Affairs and Northern Development
Andrew Cambell	Department of Justice
Robert Chapple	Government of Nunavut
Adule Chris	Government of Nunavut
Jason Tologanak	Government of Nunavut
Robert Esser	Nunavut Tunngavik Incorporated

Peggy Adjun	Government of Nunavut
Paul Emingak	Kitikmeot Inuit Association
Wendy Randall	Hope Bay Mines Limited
David Boyle	Government of Nunavut
Tara Rutherford	Government of Nunavut
Andrew Bell	Government of Nunavut
Christopher Tickner	Nunavut Planning Commission
Peter Evalik	Government of Nunavut
Tara Robertson	Nunavut Planning Commission
Tara Arko	Nunavut Impact Review Board
Darlene Elias	Government of Nunavut
Aliza Weller	Nunavut Impact Review Board
Alex Buchan	Hope Bay Mines Limited
Corey Dimitruk	Government of Nunavut
Hugh MacIsaac	Government of Nunavut

## **APPENDIX C – List of Submissions and Correspondence**

### Application

1. Letter dated February 22, 2011 from Janet King, Assistant Deputy Minister, Indian and Northern Affairs Canada with a copy of the Draft Nunavut Waters Regulations and copy of the Nunavut Watershed Descriptions. [Received by NWB on March 4, 2011]

### Initial Submissions & Correspondence

1. Letter dated April 20, 2011 from Dionne Filiatrault, Executive Director, to Glen Stephens, Indian and Northern Affairs Canada and full distribution Re: Notice of Receipt of Draft Nunavut Waters Regulations and Notice of Technical Meeting/Pre-hearing Conference.
2. Letter dated April 21, 2011 from Phyllis Beaulieu, Manager of Licensing, to Manitoba Dene Bands Re: Draft Nunavut Water Regulation for review and comments.
3. Letter dated May 18, 2011 from Larry Connell, Agnico-Eagle Mines Ltd., to Phyllis Beaulieu, Manager of Licensing Re: Comment on Proposed Draft Nunavut Waters Regulations.
4. Letter dated May 19, 2011 from Sharon Ehloak, Nunavut Planning Commission, to Dionne Filiatrault, Executive Director Re: Draft Nunavut Waters Regulations.
5. Letter dated May 20, 2011 from Elizabeth Kingston, NWB & Nunavut Chamber of Mines, to Phyllis Beaulieu, Manager of Licensing Re: Draft Nunavut Waters Regulations.
6. Letter and attachment dated May 20, 2011 from Geoffrey Clark, Kitikmeot Inuit Association, to Phyllis Beaulieu, Manager of Licensing Re: Draft Nunavut Waters Regulations.
7. Comments on the Draft Nunavut Waters Regulations dated May 20, 2011 from Sattar Saleem, National Defence Canada, to Phyllis Beaulieu, Manager of Licensing, and no subject line.
8. Letter dated May 20, 2011 from Carey Ogilvie, Environment Canada, to Phyllis Beaulieu, Manager of Licensing Re: Comments on Draft Nunavut Water Regulations and Participation at Technical Meeting/Pre-Hearing Conference related to the Regulations.

9. Letter dated May 20, 2011 from Chris Hanks, Hope Bay Mining Ltd., to Phyllis Beaulieu, Manager of Licensing Re: Canada Gazette Part 1: 2011-01-14 – Nunavut Water Regulations and Nunavut Watershed Descriptions Consultation.
10. Letter dated May 20, 2011 from Barb Thomson, Nasittuq Corp., to Dionne Filiatralut, Executive Director Re: Technical Comments on Draft Nunavut Waters Regulations.
11. Letter dated May 20, 2011 from Shirley Standafer-Pfister, Peregrine Diamonds Ltd., to Dionne Filiatralut, Executive Director Re: Proponent Comments on the Draft Nunavut Waters Regulations.
12. Email submission dated May 20, 2011 from John Laitin, Sabina Gold & Silver Corp., to Dionne Filiatralut, Executive Director Subject: Sabina Tech session submission points.
13. Email submission dated May 20, 2011 from Kim Pawley, Transport Canada, to Phyllis Beaulieu, Manager of Licensing, Subject: Transport Canada comments of the draft Nunavut Water Regulations.
14. Letter dated May 26, 2011 from Terry Audla, Nunavut Tunngavik Incorporated, to Dionne Filiatralut, Executive Director Re: Draft Nunavut Water Regulations Hearings.
15. Letter dated May 30, 2011 from Luis Manzo, Kivalliq Inuit Association, to Phyllis Beaulieu Re: Draft Nunavut Water Regulations.
16. Letter and attachment dated June 20, 2011 from Glen Stephens, AANDC, to Dionne Filiatralut, Executive Director Re: Responses to the Questions Raised during the Nunavut Water Board's Technical/Pre-Hearing Conference Meetings in Iqaluit and Yellowknife the Week of May 30, 2011.
17. Memo dated June 29, 2011 to full distribution from Dionne Filiatralut, Executive Director, Subject: Draft Nunavut Waters Regulations Pre-Hearing Conference Decision.
18. Notice of Public Hearing to full distribution list, dated June 29, 2011.
19. Memo dated June 30, 2011 to Bill McConkey, Nortext, from Phyllis Beaulieu, Manager of Licensing, Subject: Request to Place Ad for Draft Waters Regulations.
20. Letter, attachment, and Executive Summaries in English and Inuktitut, dated August 25, 2011 from NWB & Nunavut Chamber of Mines, to Phyllis Beaulieu, Manager of Licensing Re: Draft Nunavut Waters Regulations – Public Hearing.
21. Letter dated August 25, 2011 from Hope Bay Mining Ltd., to Dionne Filiatralut, Executive Director Re: Draft Nunavut Waters Regulations.

22. Email dated August 25, 2011 from Richard Spaulding, Nunavut Tunngavik Incorporated, to Dionne Filiatrault, Executive Director Re: Public Hearings on Nunavut Water Regulations.
23. Email dated August 25, 2011 from Peter MacKenzie, National Defence Canada, to Phyllis Beaulieu, Manager of Licensing Subject: Additional Comments on the Draft Nunavut Waters Regulations – National Defence.
24. Letter, attachment and English executive summary dated August 26, 2011 from Geoffrey Clark, Kitikmeot Inuit Association, to Dionne Filiatrault, Executive Director Re Submissions to Nunavut Water Board Hearing on the Draft Nunavut Water Regulations of the Kitikmeot Inuit Association.
25. Letter dated August 31, 2011 from Luis Manzo, Kivalliq Inuit Association, to Nunavut Water Board Re: Review of Draft Nunavut Water Regulations.
26. Letter dated August 31, 2011 from Sharon Ehloak, Nunavut Planning Commission, to Dionne Filiatrault, Executive Director, Re: Draft Nunavut Waters Regulations Public Hearing.
27. Agenda for September 16, 2011 Public Hearing in Cambridge Bay, NU.
28. Agenda for September 13, 2011 Public Hearing in Iqaluit, NU.
29. Agenda for September 15, 2011 Public Hearing in Rankin Inlet, NU.

## **APPENDIX D – List of Exhibits from the Public Hearings**

Exhibit 1 – Electronic Copy of Nunavut Water Regulations (Draft) Presentation from the NWB public Hearings dated September 2011 Submitted by Aboriginal Affairs and Northern Development, File 110913 AANDC Water Regulations Presentation – ICHE.PPT.

Exhibit 2 – Hard Copy of Nunavut Water Regulations (Draft) Presentation form NWB Public Meetings Dated September 2011 Submitted by Aboriginal Affairs and Northern Development.

## **APPENDIX E – Section 82 and 174 of the NWNSRTA**

### **Section 82 states:**

- 82.** (1) The Governor in Council may, on the recommendation of the Minister, make regulations
- (a) establishing water management areas in Nunavut consisting of river basins or other geographical areas;
  - (b) for the purposes of paragraphs (b) to (d) of the definition “waste” in section 4,
    - (i) specifying substances and classes of substances,
    - (ii) prescribing quantities or concentrations of substances and classes of substances, and
    - (iii) describing treatments of or changes to water;
  - (c) authorizing the use without a licence of waters in Nunavut, except in a national park, for the purpose, in the quantity, at the rate, during the period and subject to the conditions specified in the regulations;
  - (d) authorizing the deposit of waste without a licence in Nunavut, except in a national park, and specifying the conditions of the deposit, including the quantities, concentration and types of waste that may be deposited;
  - (e) prescribing the manner in which a report under subsection 12(3) is to be made;
  - (f) on the advice of the Board or after consultation with the Board, exempting any class of applications in relation to licences from the requirement of a public hearing;
  - (g) prescribing the criteria to be applied by the Board in determining, on an application for a licence, whether the proposed use of waters or deposit of waste requires a type A or a type B licence;
  - (h) prescribing what constitutes a material conflict of interest for the purpose of subsection 23(1);
  - (i) in relation to the security referred to in subsection 76(1),
    - (i) prescribing the form and nature of the security and the terms and conditions on which it is to be furnished and maintained, and
    - (ii) prescribing the amount of the security or the manner of determining the amount of the security or authorizing the Board to fix that amount in accordance with the regulations;
  - (j) prescribing water quality standards in Nunavut, except in a national park;
  - (k) prescribing effluent standards in Nunavut, except in a national park;
  - (l) prescribing standards for the design, construction, operation and maintenance of works used in relation to appurtenant undertakings;
  - (m) prescribing the fees to be paid
    - (i) for the right to use waters or deposit waste in waters under a licence,
    - (ii) for the filing of any application with the Board, and
    - (iii) for inspection of the register maintained under section 78;

- (n) prescribing the times at which and the manner in which the fees prescribed under paragraph (m) shall be paid;
  - (o) requiring persons who use waters or deposit waste in waters in Nunavut, except in a national park, to maintain books and records for the proper enforcement of this Part, and to submit to the Board, on a monthly, quarterly, semi-annual or annual basis, reports containing specified information on any of their operations;
  - (p) requiring persons who deposit waste in waters in Nunavut, except in a national park, to submit representative samples of the waste to the Board for analysis or to analyse representative samples and submit the results to the Board;
  - (q) respecting the taking of representative samples of waters or waste and respecting the method of analysing those samples;
  - (r) prescribing the form of the register to be maintained under section 78 and the information to be entered in it;
  - (s) respecting the duties of persons designated as analysts under section 85; and
  - (t) generally, for carrying out the purposes and provisions of this Part.
- (2) For the purposes of paragraphs (1)(a), (c) and (d), the recommendation of the Minister is subject to the concurrence of the Board.
- (3) For the purposes of paragraph (1)(b), the recommendation of the Minister shall be made after consultation with the Board.
- (4) Regulations made under subsection (1) may vary, among water management areas established under paragraph (1)(a), according to the use of waters, the purpose of that use and the quantity and rate of flow of waters used, and the quantities, concentrations and types of waste deposited or any other criteria.

**Section 174 states:**

- 174.** (1) The regulations made under paragraph 33(1)(c) of the *Northwest Territories Waters Act* are deemed, in relation to the use of waters or the deposit of waste in Nunavut, to prescribe, as classes of applications that are exempted from the requirement of a public hearing, the classes of applications in relation to the following:
- (a) in the case of a Type A licence,
    - (i) any amendment that does not affect the use, flow or quality of waters or alter the term of the licence,
    - (ii) any amendment that affects the use, flow or quality of waters or alters the term of the licence, where the Nunavut Water Board, with the consent of the Minister, is of the opinion that an emergency exists that requires the amendment, or
    - (iii) one or several renewals of a total duration not exceeding sixty days; and
  - (b) in the case of a Type B licence, its issuance, amendment, renewal or cancellation.
- (2) Within one year after the day on which this Act is assented to, the Minister shall, unless regulations have been made under paragraph 82(1)(f) before that time to replace the regulations referred to in subsection (1), consult the Board on the application of subsection (1).