



NUNAVUT WATER BOARD

WATER LICENCE NO. 1AR-NAN1420

SHORT TERM RENEWAL

REASONS FOR DECISION

NUNAVUT WATER BOARD



In the Matter of:

Applicant: Canzinc Mines Ltd.

Subject: Application for Short term renewal of Existing Type "A" Water Licence No. 1AR-NAN1419

Date: November 15, 2019

Precedence: Where there is any inconsistency or conflict between the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada (Nunavut Agreement)* and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSRTA)*, the *Nunavut 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 Agreement Act*, the *NWNSRTA* prevails to the extent of the inconsistency or conflict.

Table of Contents

| | |
|---|----------|
| REASONS FOR DECISION | 4 |
| SECTION 1: BACKGROUND AND REGULATORY HISTORY | 4 |
| SECTION 2: SUMMARY OF COMMENT SUBMISSIONS OF THE PARTIES | 6 |
| SECTION 3: SUBMISSIONS BY OTHER INTERVENING PARTIES OR MEMBERS OF THE PUBLIC | 6 |
| SECTION 4: JURISDICTION OF THE BOARD..... | 7 |
| SECTION 5: DECISION TO GRANT THE SHORT TERM RENEWAL | 8 |
| SECTION 6: WATER LICENCE 1AR-NAN1419 AMENDED TERM..... | 9 |

REASONS FOR DECISION

SECTION 1: BACKGROUND AND REGULATORY HISTORY

Application

The Application that is the subject of this decision is for a short term renewal (STR Application) filed by Canzinc Mines Ltd. (Canzinc or the Applicant) requesting that an existing Type “A” Water Licence No. 1AR-NAN1419 (the Existing Water Licence) be amended to renew the Existing Licence term for a period of up to 180 days from the current expiry date of December 22, 2019.

It is important to note that the Applicant currently has a full renewal and amendment application before the Nunavut Water Board (the NWB or Board) that was received on June 20, 2019 (the Renewal and Amendment Application). On September 13, 2019 during the Technical Meeting and Pre-hearing Conference (TM/PHC) associated with the Renewal and Amendment Application, the Applicant indicated their concerns that due to the prescribed timelines for the Board’s notice period in advance of a Public Hearing, the likely timing of a Public Hearing, the typical timelines for the Board’s decision-making and reporting following a Public Hearing and recognizing the Minister’s timelines for decision-making, that the timing of the renewal of the Existing Licence may result in the Existing Licence expiring before the Board and the Minister complete their consideration of the Renewal and Amendment Application. Consequently, it was discussed by the parties at the TM/PHC that the Applicant may wish to consider bridging the gap between the expiry of the Existing Licence and the potential issuance of an amended and renewed licence by filing a short term renewal application.

The Board identified for the parties at the TM/PHC and then reiterated in the NWB’s Pre-hearing Conference Decision report¹ that, as permitted under s. 9(1)(b) of the *Nunavut Waters Regulations*, SOR/2013-69 (*Regulations*)² an extension of the Existing Water Licence for a period of up to 180 days may be considered by the Board without holding a Public Hearing.

On October 10, 2019 the Board received the STR Application from the Applicant. The STR Application requested the renewal of the Existing Licence on the following basis:

- Absolutely no changes to the Existing Licence (administrative or otherwise);

¹ Nunavut Water Board, Type “A” Water Licence 1AR-NAN1419: Pre-Hearing Conference Decision Regarding an Application for Renewal and Amendment, September 20, 2019.

² Section 9(1)(b) establishes that:

9. (1) For the purposes of section 13.7.3 of the Agreement and subsection 52(1) of the Act, no public hearing is required in respect of an application for... (b) one or several renewals of a type A licence if the total duration of the renewal or renewals does not exceed 180 days;

- The Short term renewal would not exceed 180 days from the date on which the Existing Licence expires (December 22, 2019) with the expiry of the STR occurring on the earlier of June 19, 2020 or upon the grant of a renewed water licence if the Board and Minister grant the Renewal and Amendment Application and issue a renewed water licence;
- No plans, studies, reports, or designs would be submitted in support of the STR Application as this information has already been provided or will be provided during the Board's processing of the full Renewal and Amendment Application; and
- Requesting that even if the STR Application is granted, that the Board will continue to process the Renewal and Amendment Application in as timely and efficient a manner as possible.

Application and Supporting Materials Submitted by the Applicant

The following documents were included with the STR Application:

1. Cover Letter;
2. Completed STR Application form; and
3. \$30 application fee.

The STR Application and supporting documentation were placed on the Board's Public Registry and is available from the NWB ftp site at the following link:

<ftp://ftp.nwb-oen.ca/registry/1%20INDUSTRIAL/1A/1AR%20-%20Remediation/1AR-NAN1419/1%20APPLICATION/2019%20Short-Term%20Renewal/>

Existing Licence History

The existing Type "A" Water Licence No. 1AR-NAN1419 was issued by the NWB on December 23, 2014³ (the Existing Licence). The Existing Licence was subsequently approved by the Minister of Aboriginal Affairs and Northern Development Canada (as the Minister was known then, now Crown-Indigenous Relations and Northern Affairs, or CIRNA) on January 29, 2015 and is set to expire on December 22, 2019. The Existing Licence authorizes the use of water and deposit of waste in relation to the reclamation activities being undertaken at the former Nanisivik

³ Nunavut Water Board, Reasons for Decision for 1AR-NAN1419, Applicant: Canzinc Mines Limited, issued December 23, 2014

Mine, a lead-zinc mine located approximately 30 km east of Arctic Bay, within the Qikiqtani Region of Nunavut.

Regulatory History of the Application

On October 11, 2019 the Board issued Notice of the STR Application and commenced a three (3) week technical review and comment period, which closed on November 01, 2019.

Following the review of comments received during the three (3) week comment period, and pursuant to Article 13 Clause 13.3.6 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in Right of Canada (Nunavut Agreement)* and s. 29⁴ of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002, c. 10 (NWNSRTA), the members of the Board's duly appointed decision-making panel for the file (Nanisivik Panel or P13) met on November 07, 2019 to consider the STR Application. By way of Panel Motion No. 2019-17-P13-03 the Nanisivik Panel approved the grant of the STR Application. The Panel authorized the issuance of a single renewal of the Existing Licence, being a change to the expiry date of the Licence to add a further term of up to 180 days. This Short Term Renewal would result in the expiry of the Existing Licence occurring either on June 19, 2020 or upon the grant of a renewed water licence if, in future, the Board and Minister grant the Renewal and Amendment Application and issue a renewed water licence.

SECTION 2: SUMMARY OF COMMENT SUBMISSIONS OF THE PARTIES

On November 01, 2019, CIRNA sent an email response stating that “*they were satisfied that the application contains all the necessary information and that in this case the short term renewal is necessary to extend the expiry date of water licence in order to not let their licence expire before ministerial approval*”.

SECTION 3: SUBMISSIONS BY OTHER INTERVENING PARTIES OR MEMBERS OF THE PUBLIC

There were no submissions on the STR Application provided to the Board by any other intervening parties or members of the public.

⁴ Section 29 of the NWNSRTA states:

(1) The Board may establish panels of the Board and delegate any of its powers, duties and functions to them.

SECTION 4: REQUIREMENTS OF THE NUNAVUT AGREEMENT, NWNSRTA, AND NWR

The Board has jurisdiction over the STR Application pursuant to Division 2 of the *NWNSRTA*.⁵ Relevant sections in that Division allow the Board to renew a licence⁶ on application or on the Board's own initiative. As required by ss. 55(1) and (4) of the *NWNSRTA*, the Board provided notice of the STR Application on October 11, 2019 and invited interested persons to provide their comments on or before November 01, 2019.

The Nunavut Waters Regulations

As set out in s. 9(1)(b) of the *Nunavut Waters Regulations*,⁷ because the STR Application involves a short-term renewal not exceeding 180 days, the Board was not required to hold a Public Hearing in respect of the STR Application. It should also be noted that no submissions were received during the Board's public comment period for the STR Application that identified an interest in a Public Hearing being held.

Pre-licensing Considerations

Land Use Planning and Impact Assessment

On May 24, 2019, the Nunavut Planning Commission (NPC) issued its land use conformity determination⁸ associated with the Renewal and Amendment Application of Type "A" Water Licence No. 1AR-NAN1419 for post-closure monitoring of water quality and geotechnical stability at the former Nanisivik Mine. The NPC stated that

the activities associated with this proposal were previously reviewed by NPC, and a conformity determination was issued on January 8, 2002, on June 19, 2008 and on May 2, 2014, which still applies. In addition, the activities were previously screened by the Nunavut Impact Review Board (NIRB FILE NO.: 02MC117). This project proposal is exempt from the Nunavut Planning and Project Assessment Act (NUPPAA) under section 235 of that Act. The above noted project proposal is exempt from screening by the NIRB under section 12.4.3 of the Nunavut Agreement as amended because it is for a component or activity that was part of the original proposal and its inclusion is not a significant modification of the project."

As the STR Application involves no changes other than a change to the expiry of the Existing Licence, the NWB has concluded that the conformity and environmental assessment requirements

⁵ Sections 42-81 of the *NWNSRTA*.

⁶ See s. 43(1)(b) of the *NWNSRTA*.

⁷ S.O.R./2013-69.

⁸ Nunavut Planning Commission correspondence dated May 24, 2019

for the STR Application as required under ss. 38 and 39 of *NWNSRTA* have been met and the Application can now be processed by the NWB.

Inuit Water Rights

During the comment period for the STR, the Qikiqtani Inuit Association did not identify any outstanding requirements for water user compensation pursuant to s. 63(1) of the *NWNSRTA*, and as such, the Board has determined that the requirements of s. 63(1) have been satisfied with respect to the STR Application.

SECTION 5: DECISION TO GRANT THE SHORT TERM RENEWAL

Following the close of the comment period associated with the STR Application and for reasons elaborated further below, the Board has decided to grant the Applicant's request to extend the expiry of the Type "A" Water Licence No. 1AR-NAN1419 to the earlier of either June 19, 2020, or the date on which a renewed water licence is granted, if, in future, the Board and Minister choose to grant/approve the Renewal and Amendment Application and issue a renewed water licence. As indicated in the NWB's Pre-Hearing Conference Decisions Report,⁹ the Renewal and Amendment Application is currently proceeding to a scheduled written Public Hearing, with the Public Hearing Record expected to close at the end of November, 2019.

Based on the discussion of the issue of the short term renewal that took place on September 13, 2019 during the Technical Meeting and Pre-Hearing Conference for the full Renewal and Amendment Application, the comments received from CIRNA, no indications of public concern with the STR Application and the Board's consideration of its objects and mandate, the Board has determined that it is preferable to renew the Existing Licence for up to 180 days, rather than having the Existing Licence possibly expiring while the Board and Minister are considering the full Renewal and Amendment Application.

The NWB is confident that if this short-term extension of the Existing Licence is approved, the use of water and deposit of waste in relation to the reclamation activities being conducted at the former Nanisivik Mine will continue to meet the requirements of the Existing Licence and acceptable standards for water quantity and water quality, throughout its duration. In granting the STR Application, the Board is satisfied that the STR Application contained the required

⁹ NWB, Type "A" Water Licence No: 1AR-NAN1419; Pre-Hearing Conference Decision Regarding an Application for Renewal and Amendment to Water Licence.

information and was in the proper form having regard to the requirements of the *NWNSRTA*¹⁰ and associated *Regulations*.¹¹

SECTION 6: WATER LICENCE 1AR-NAN1419 AMENDED TERM

The Applicant is advised that the short term extension of the Existing Licence does not take effect until approval of the Minister is given or deemed to have been given pursuant to s. 56 of the *NWNSRTA*.¹²

As indicated in Section 5 of this Decision, the Nanisivik Panel, by way of Motion No: 2019-17-P13-03 has decided to issue the requested STR Water Licence No: 1AR-NAN1420 (the numbering has been updated to reflect the expiry in 2020), adding up to an additional 180 days to the expiry date of the Existing Licence. This will result in the Existing Licence having a new expiry date of June 19, 2020. All other terms and conditions of the Existing Licence remain the same.

¹⁰ See s. 48 of the *NWNSRTA*.

¹¹ *Nunavut Waters Regulations*, SOR/2013-69.

¹² Section 56 of the *NWNSRTA* states:

The issuance, amendment, renewal and cancellation of a Type A licence, and if a public hearing is held, a Type B licence are subject to the approval of the Minister.

Under s. 56(2.2) if the Minister does not issue a decision within 45 days of receiving the Licence from the Board, (or within 90 days if the Minister has extended the decision-making period by an additional 45 days) the Minister is deemed to have approved the Licence.