

Ministre des Affaires
autochtones et du Nord



Minister of Indigenous and
Northern Affairs

Ottawa, Canada K1A 0H4

JAN 12 2017

Ms. Elizabeth Copland
Chairperson
Nunavut Impact Review Board
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Dear Ms. Copland:

Thank you for your letter of June 15, 2016, and the enclosed Final Hearing Report for Sabina Gold and Silver Corporation's proposed Back River Gold Mine Project (the Project).

The Final Hearing Report (the Report) contains the Nunavut Impact Review Board's (the Board) assessment of the potential ecosystemic and socioeconomic effects of the Project. The Board has concluded that on the basis of the potential for significant adverse ecosystemic and socioeconomic effects in Nunavut and the Northwest Territories that cannot be adequately managed and mitigated, the Project should not proceed at this time. Specifically, the Board has determined that there is potential for significant adverse effects on caribou and other terrestrial wildlife, fish, freshwater and marine environments, and that there could also be adverse socioeconomic effects associated with these ecosystemic effects. The Board has also concluded that effects on caribou and terrestrial wildlife could result in additional cumulative and transboundary effects on already declining populations. However, the Board also acknowledged the general support for the socioeconomic benefits that are expected to accrue to the Kitikmeot region and beyond if the Project were to proceed.

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The Ministers of Environment and Climate Change, Fisheries Oceans and the Canadian Coast Guard, Natural Resources, Transport and I are the ministers responsible for this Project and have the jurisdictional responsibility to make a decision on the basis of this Report. After the Report was issued, further to the Government of Canada's principles to consult Indigenous Peoples and seek the views of communities, we invited Indigenous organizations that had participated in the Board's process, as well as the Governments of Nunavut and the Northwest Territories, to comment on the Report. We also received comments from the proponent and several other organizations and individuals. The comments received were not all consistent, some questioned the conclusions of the Report, while others were in support of the Report. However all of the comments we received were helpful to put the Report in context while ensuring that decisions in respect of this Project are based on science, Inuit Qaujimaningit and First Nation traditional knowledge, and that we have all the relevant information required.

After careful consideration, pursuant to Section 12.5.7(e) of the *Nunavut Land Claims Agreement*, we are referring the Report back to the Board for further review or public hearings as the Report is deficient with respect to some ecosystemic issues. In our view, based on the process to date, it is premature to conclude that the Project would lead to unacceptable or unmanageable ecosystemic or socioeconomic impacts. There are a number of areas where there was insufficient information presented in the Report to support the conclusions of the Board, and where further information is required so that the ministers may understand the rationale behind the conclusions presented by the Board prior to making a decision on whether the project should proceed. This is particularly important in areas where the Board has expressed a lack of confidence or significant uncertainty while the Report and the broader record indicates that many of the participants (including Indigenous and non-Indigenous witnesses and subject matter experts) expressed confidence that the measures presented could mitigate and manage potential adverse effects to an acceptable level. A deeper inquiry into the issues identified by the Board might point to sound management approaches.

The responsible ministers' assessment of the Board's Report identified the following areas where sufficient information was not provided to support the Board's conclusion that effects are unacceptable or that there is an inappropriately high degree of uncertainty.

Caribou and Terrestrial Wildlife

The most challenging issue before the Board relates to caribou. With respect to this issue, the Board has concluded that there is considerable uncertainty in relation to the effects predicted on caribou and has acknowledged that caribou populations adjacent to the project area cannot sustain any additional pressures at present. The Report indicates that the Board is not confident that greater than predicted effects could be adaptively managed and that proposed monitoring and adaptive management approaches do not go far enough.

At the conclusion of the Final Hearing, the Government of Nunavut, Sabina Gold and Silver Corporation, and the Kitikmeot Inuit Association jointly submitted proposed terms and conditions for the Board's consideration. Due to the timing of these submissions, the proposed plan and the proposed terms and conditions were not discussed by the participants. Therefore, the Board did not have the opportunity to hear the views of participants as to whether and how this proposal would sufficiently reduce uncertainty over impact mitigation. Although the Report acknowledges the efforts in developing these measures, it does not discuss the shortcomings of these measures in satisfying the Board that effects to caribou would be adequately mitigated. Further in-depth review of the potential effects of the Project on caribou, including full consideration of this submission, would provide an opportunity for the Board and others to clearly understand the effectiveness of the proposed measures.

Perhaps because these issues were not fully canvassed before it, the Board has not expressed its own views on the efficacy or adequacy of the joint Sabina, Government of Nunavut, and Kitikmeot Inuit Association proposal. It therefore seems reasonable to believe that there could be an avenue for fruitful discussion that has not been fully explored. While we share the Board's view that it is premature to be confident these matters can be managed adequately, likewise and on the basis of our reading of the Report, we believe it is premature to conclude they cannot.

In respect of terrestrial wildlife other than caribou, it is difficult to determine from the Report what the Board concluded, how it came to its conclusions, and on what evidence. The proposed mitigation measures drawn from the Wildlife Mitigation and Monitoring Plan and the Wildlife Effects Monitoring Plan were aimed at mitigating potential effects on terrestrial wildlife to an acceptable level. Before the Board can find them to be irremediably wanting, the parties should be given an opportunity to better understand the Board's concerns and propose ways to address them.

Freshwater Aquatic Environment

In regard to the issue of fish, the Board concluded "that it is not confident that the mitigation measures as proposed would be sufficient to mitigate effects because of limited consideration of Inuit Qaujimaningit principles in the project design regarding the planned fish-out and dewatering of multiple lakes, and limited data presented on the lakes that could be disrupted due to water extraction associated with the winter ice road. Although the Board recognizes that the Bernard Harbour offsetting plan is clearly supported by key parties, there is currently a lack of assurance that it would be sufficient to offset all anticipated serious harm to fish." We understand this conclusion to mean that additional and more detailed information and refinement of offsetting, dewatering and fishout plans would be necessary at the appropriate stage.

On day 3 of the final hearing, the Kitikmeot Inuit Association (KIA) mentioned "The KIA would be satisfied with a commitment from Sabina to actively involve the KIA in adaptive management of the fish offsetting plan" (p.638 of the final hearing transcript, volume 3). They also mentioned "The KIA would be satisfied with a commitment from Sabina to actively involve the KIA in evaluating early outcomes from monitoring and in updating the fish offsetting plans." (p. 639 of the final hearing transcript, volume 3). During the closing comments of their presentation, they concluded that "while several technical issues remain, the KIA is confident that remaining issues will be resolved by continuing discussions with Sabina" (p. 641 of the final hearing transcript, volume 3). Fisheries and Oceans Canada understands that consideration of Inuit Qaujimaningit principles in the project design regarding the planned fish-out and dewatering of multiple lakes will be required. We agree, and would have expected that the Board would be confident that the *Fisheries Act* Authorization process would be ideally suited to this purpose, in the event the other important issues raised in the Report could be addressed.

Marine Environment

On the issue of the marine environment, the Board's conclusion was that it saw "considerable uncertainty" in the effects predicted for the proposed saline water discharge and emergency preparedness and response capacity for shipping of bulk fuel into Bathurst Inlet. Having reviewed the Board's recitation of the evidence, and the Board's views and conclusions, it is not clear why this uncertainty remains.

While we would have expected that the information before the Board on effects predictions and emergency preparedness would meet the appropriate standard for impact assessment, the Board appears to have concluded otherwise. However, at this stage, we do not have enough of an understanding of the Board's concern to come to our own conclusions.

This issue thus requires further review to make sure the Board's concerns are well understood by the parties and that, most importantly, they are given the opportunity to try to address them. By this approach, it seems reasonable to believe that the remaining uncertainty could be resolvable, and this process may bring with it the ability to make refined impact predictions and to develop additional mitigations if necessary.

Water Quality (Ground and Surface)

On the issues of ground and surface water quality, the Board concluded that there was "considerable uncertainty" on a number of fronts. The Report indicates that while the Board recognizes that further consideration would be given to these issues through the water licensing process, the Board is not satisfied that sufficient analysis has been undertaken. Further elaboration is required to explain why the information presented is not adequately developed to be confident that the regulatory process would manage them appropriately.

Climate and Meteorology

On the issue of climate and meteorology, the Board expressed that it was not confident that the measures proposed would be sufficient to mitigate effects related to climate change on tailings and waste rock storage areas if the climate continued to warm past the year 2100 where climate change projections are not as well understood. However, after reviewing the Board's conclusions, it is not clear why the Board was not confident in the adequacy of the measures put forward by the proponent and interveners to manage the highly variable climatic conditions. Further, it is not clear why, when the coming to pass of any of the predictable scenarios would be detectable early with monitoring and manageable with feasible and implementable measures, the uncertainty was deemed too great. The Report requires further explanation on this point. We also find that further review of these issues is required to give parties the opportunity to address the Board's concerns and develop additional mitigations if necessary.

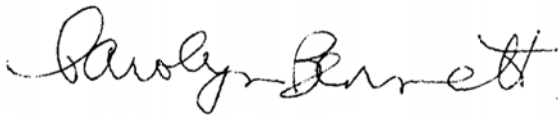
The Board also expressed its view that more information about tailing storage facilities in an Arctic environment would be helpful. We trust that this information would be sought through further review.

Conclusion

For each of the above topics, important concerns were put before the Board and either specific proposals or general approaches to managing the issues were presented. While the Report is being referred back to the Board due to the deficiencies outlined above, we encourage the Board to take the opportunity for further review or hearings, as necessary, to improve its confidence where significant uncertainty remains, if possible. It will also give the parties an opportunity to better understand and address the Board's concerns and to develop additional mitigations measures if such are available and sufficiently effective in reducing the potential negative ecosystemic and socioeconomic impacts of this Project to an acceptable level.

We would like to take this opportunity to acknowledge the hard work of the Board and its staff in its review of this Project. While we believe socioeconomic development and environmental protection can go hand-in-hand, we also recognize that it is no easy task ensuring that is the case. Fortunately, the robust review process in Nunavut provides opportunities for additional consideration of some of the key issues at play. We would like to assure the Board that our departments are available to contribute relevant expertise to any further review or hearings.

Sincerely,

A handwritten signature in cursive script, reading "Carolyn Bennett".

Hon. Carolyn Bennett, M.D., P.C., M.P.

c.c.: The Honourable Catherine McKenna, P.C., M.P.
The Honourable Dominic LeBlanc, P.C., M.P.
The Honourable James Gordon Carr, P.C., M.P.
The Honourable Marc Garneau, P.C., M.P.