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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

October 11, 2016

File No: 2AM-DOH1323

By Email

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Re: Process Clarifications and Corrections by the Nunavut Water Board in Respect of Recent Nunatsiaq Articles about TMAC's Doris North Water Licence Amendment

I am providing this letter on behalf of the Nunavut Water Board (Board or NWB) in response to a recent article by Jane George published in Nunatsiaq News on September 19, 2016, entitled: "Inuit voices lacking at TMAC's Nunavut Water Board hearings", as well as your editorial article published on September 28, 2016 entitled "Who pays the cleanup bill? Nunavut board mulls Doris North cleanup fund". While it is not generally the practice of the NWB to comment on matters that have been remitted to the Board for decision-making, as these articles do not fairly or accurately represent the Nunavut regulatory process generally and the NWB's process specifically, the Board has taken this exceptional step of providing the following clarifications and corrections. In offering these clarifications, the Board emphasizes that it is not commenting about the specific details of the amendment application that was the subject matter of the Public Hearing referenced in these articles (an application to amend Type "A" Water Licence 2AM-DOH1323 by TMAC Resources Inc. in respect of the Doris North Gold Mine Project) but rather the regulatory process in general.

I want to make it clear that the Board recognizes the significant role played by the media in focusing attention on regulatory processes and encouraging public engagement, which is vital to the integrated regulatory process in Nunavut, and the NWB is grateful for Nunatsiaq's commitment to covering these stories. However, the Board also notes that this important role can only be fulfilled when a fair and accurate picture of the regulatory process is presented. In the Board's view, the clarifications and corrections provided below are necessary to accurately portray the regulatory process and we appreciate you taking the steps required to ensure your readers receives these updates.

Ms. George's article on September 19, 2016 began with the following observation:

Under the Nunavut Land Claims Agreement, Nunavut's regulatory boards are intended to guide resource development in Nunavut and keep that control in the hands of Nunavummiut...But that wasn't the take-away for observers at a recent water license hearing...

Ms. George expanded on this theme that regulatory boards are "failing" to fulfill the mandate under the Nunavut Land Claims Agreement (NLCA) by citing the following comment:

What struck Maksagak was how much hadn't been worked out before the board hearing—important issues to protect the land and the wildlife and get the mine moving into production, he said.

Quoting this statement without referencing the extensive environmental impact assessment process previously conducted by the Nunavut Impact Review Board (NIRB) and the NWB's technical and public review processes for this application to amend the existing Doris North Mine Project water licence is misleading, as it suggests that the NWB Public Hearing should have, but did not directly address land and wildlife management issues. These issues are clearly outside the scope of the NWB's consideration of a water licence and were already subject to extensive review, comment and recommendations associated with the NIRB's assessment of the expanded project which resulted in the issuance of a revised Project Certificate by the NIRB on September 23, 2016.

As the article provided no context or recognition of the processes leading up to the NWB Public Hearing it also created the mistaken impression that the Board's consideration of a water licence is solely based on the evidence and issues that were presented at the Public Hearing. It is important to remember that an NWB Public Hearing marks only the last phase of an extensive and rigorous review of an application that takes place over a period of several months/years (in this case the application was received in June 2015). As in all cases, the NWB's processing of this application involved several in person and teleconference meetings, several calls for written and spoken comments and several opportunities for technical and public review and comment.

In addition, the title and tone of the article in respect of Inuit participation is also very misleading. Throughout the Board's review of the application several opportunities for Inuit participation through the Kitikmeot Inuit Association and also individually via community participation were provided. To suggest, on the basis of community attendance at the Public Hearing, that the voices of Inuit and Nunavummiut were not heard as part of the NWB's process is simply untrue.

Finally, several comments and a general theme in the article that "deals" between the applicant and Indigenous and Northern Affairs Canada (INAC) were essentially dictating the outcome and results to the NWB are also false and show a lack of understanding of the regulatory and decision-making processes established under Nunavut's regulatory framework. Although in NWB processes all parties are encouraged to have open discussions with a view to resolving issues and Ms. George observed the parties engaging in such discussions during the Hearing, in all cases the NWB remains the decision-maker responsible for making recommendations regarding a given application to the Minister of INAC for her approval or rejection. The Board is not bound by agreements that are, or are not, reached by the parties and evaluates all evidence received during

the consideration of an application in accordance with their roles and responsibilities for the regulation, use and management of water in the Nunavut Settlement Area as set out under the NLCA and relevant legislation. The NWB's discretion is not limited to how parties have agreed to resolve the issues and it is inaccurate and insulting to characterize the Board as somehow allowing the parties to the process to dictate the outcome.

With respect to your editorial on September 28, 2016 entitled "Who pays the cleanup bill?", the NWB wishes to clarify the following points about the existing reclamation security posted under the existing Water Licence, the NWB's role in fixing the security amount under a water licence and measures that may be taken by the Board to address potential overbonding:

- In 2013, the Board recommended and the Minister of INAC approved the renewal of the current Type "A" Water Licence, 2AM-DOH1323 (the Licence). Under Part C, Item 1 of the Licence, the Board determined that reclamation security in the amount of \$13 million was required to be posted by the Licensee with the Minister. This amount was fixed by the Board and was considered to be adequate to ensure the reclamation of the undertaking based on the scope of the undertaking as approved under the Licence. This security has been posted with the Minister and is currently in place for the site;
- No expansion to the scope of the water use and waste deposits authorized under the current Licence can take place without the NWB and the Minister approving amendments to the existing Licence (including amendments to the security amount to reflect the expanded scope of activities). If the NWB does not recommend and/or the Minister does not approve an expansion to the scope of the activities, the situation under the existing Licence would not change and activities with the potential to increase reclamation liability would not proceed;
- The NWB does not have jurisdiction to direct a "split" between the security held by INAC under an amended water licence and any security that may be held by the Kitikmeot Inuit Association (KIA) as the owner of the lands. The NWB's jurisdiction is limited to fixing an amount of reclamation security that must be held under the Licence and the NWB's decision does not bind the KIA in terms of the security arrangements the KIA, as landowner, chooses to enter into with TMAC Resources Inc.
- However, in order to limit the potential or effect of "overbonding" that could occur if the NWB were to require the entire amount of reclamation security for the undertaking to be posted under the Licence without regard for the reclamation security requirements that the KIA may impose, the NWB does consider submissions regarding the security required to be posted by the KIA. On the basis of this evidence, the NWB may, if specific considerations are met, discount from the security fixed under the Licence an amount to reflect the security that would be held for the same purpose by the KIA under land-based instruments. This discounting exercise is not the same as the NWB directing the parties as to the split between security held under the Water Licence and under KIA's land based instruments.
- Now that the parties have provided their final submissions in respect of security, the NWB will make a decision regarding whether or not to amend the existing Licence, and only if the Board recommends amending the Licence, will the Board provide the Minister of INAC with an amended licence for her consideration.

If you have any questions or require any further follow up with respect to this matter, please contact Stephanie Autut by email to stephanie.autut@nwb-oen.ca or by phone at (867) 360 – 6338.

Regards,

Stephanie Autut, Executive Director
Nunavut Water Board

cc. Public Registry