



18 May 2004

A. David Long
Vice-President, Legal
MIRAMAR HOPE BAY LTD.
300-889 Harbourside Drive
North Vancouver, B.C. V7P 3S1

Via facsimile and email

Dear Mr. Long:

Re: Doris North Project-NIRB #02-MN-134

The Nunavut Impact Review Board (NIRB or Board) has now had an opportunity to review and discuss the Information Requests (IRs) and hearing submissions that the Board received from parties as of yesterday. By way of summary of these submissions, Miramar Hope Bay Ltd. (MHL or proponent) did not want a delay to the hearing, citing among other things that it does not believe the information requested is material to NIRB discharging its mandate. Additionally, the proponent argued that no party had actually requested a delay to the hearing. Similarly, the submission filed by the Kitikmeot Inuit Association (KIA) strongly urged the Board to avoid a delay to the hearing.

On the other hand, IRs and submissions received by Indian and Northern Affairs (INAC), Environment Canada (EC), and Natural Resources Canada (NRCan) suggested that those parties will not be ready for the hearing, and that there is insufficient time to respond to any information filed by the proponent post April 2004. INAC, in a letter filed May 14, 2004, correctly noticed that in NIRB's letter of February 19, 2004, the Board notified the proponent that information items that were outstanding must be addressed before the hearing. In this light, and while the Board does not believe that all IRs requested of the federal government carry the same weight, there are several matters that are still critical and that should be addressed before the hearing. In the Board's mind, these issues include cumulative effects especially regarding the caribou, water balance including the use of Tail Lake, and matters relating to the jetty; these matters *are* significant and should be further addressed before the final hearing.

As a result, the Board believes that the hearing that was tentatively scheduled for next month should be delayed by a *short* period of time, which the Board now believes should be 4 weeks. Thus, the hearing is now formally scheduled for July 11-July 16th 2004, inclusive and will follow

the same schedule and format as before, beginning with the venue of Cambridge Bay, moving to Gjoa Haven, Talayoak, and ending in Kugluktuk.

The Board notes the comment of MHL that no party actually requested a delay in the schedule, but with respect, the Board disagrees and refers to the implication of the letters from INAC, EC, and NRCAN. These parties have told the Board that either they absolutely will not have the information to respond to significant issues that are before the Board, or, they cannot guarantee any response. Obviously, this leaves the Board in the untenable position of beginning hearings that will require a delay—either to set a future date for written submissions to follow—or, to actually reconvene public hearings at a later date.

Alternatively, the Board could go into a hearing knowing that certain items will not be fully answered, and while the Board does not believe all IRs are critical enough to delay the hearing, the Board feels as stated previously in this letter that certain of the items are key to making a sound Recommendation to the Minister. This perspective is the requirement of the Nunavut Land Claims Agreement (NLCA), section 12.5.6 that requires the Board to assess the project and its impacts. To do this, and in the event the Board recommends that the project proceeds, which has not yet been decided, the Board needs to have sufficient information to establish Terms and Conditions reflecting the primary objectives of the NLCA according to section 12.2.5 of the NLCA. That section is ecosystem-based, which the Board feels is a broad concept requiring NIRB, if in doubt, to ensure more environmental information, not less, is presented to the Board at the hearing.

Hence, the result of a short delay, in the Board's mind, offsets the disadvantage of an adjournment and actually benefits all parties including the proponent by taking away the procedural uncertainty that would accompany a hearing knowing in advance that three or four major parties will not be able to provide advice to the Board. While the Board recognizes that the risk is always for the proponent to bear to go to a hearing regardless of other parties' wishes, this risk is passed on to the Board that there may not be the evidence to approve, or potentially defer approving the project, which is always a possibility, but which rises with the knowledge that several parties cannot respond to the Applicant's information. The Board believes better judgment results from assessing the overall time frame of a hearing, including the likelihood that key information deficiencies will cause an inevitable adjournment, or the less-than-favourable alternative of concluding a hearing with a Report to the Minister based on uncertain evidence.

To conclude, all of these matters were taken into account by the Board, and carefully weighed before NIRB made its decision. This decision, which now results in a short adjournment of four (4) weeks, leaves the Board with confidence that it is in the best interests of all parties, especially the citizens and Elders, who will benefit from the better information that will result from the additional 4 weeks to allow IR responses to be prepared before these hearings. On the matter of community involvement, the Board advises parties that NIRB's Community Consultation Coordinator, Alex Thomson, will be in the communities beginning immediately to inform the public about the MHL project and invite citizens in all four communities to prepare for and be ready to attend the hearing.

The Board thanks all parties for their input to date, and encourages parties to get together to resolve outstanding information matters, and file all such information before the hearings in July. A letter on the new filing deadlines will be forthcoming from the Board shortly.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephanie Briscoe', with a stylized, cursive script.

Stephanie Briscoe
Executive Director

cc: Minister Mitchell
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Board