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Reply Attn. Brad Armstrong, Q.C.

March 15, 2010

Nunavut Water Board
P.O. Box 119
Gjoa Haven, NU
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Attention: Phyllis Beaulieu, Manager of Licensing
Dionne Filiatrault, Executive Director

Dear Ms. Beaulieu and Ms. Filiatrault:

**Re: Notification of Proposed Modification – Doris North Water Licence
2AM-DOH0713 Part H, Item 1 (Installation of 3 Tanks at Roberts
Bay)**

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We are writing this letter in support of Hope Bay Mining Ltd.'s (HBML) Notice of Proposed Modification dated March 9, 2010 respecting the location of fuel tanks at the Doris North Project. As indicated in the Notice of Proposed Modification, HBML proposes to locate three fuel tanks at Roberts Bay immediately south of the beach laydown area and near the existing 5.7 litre fuel tank, rather than at the Doris North site as originally proposed.

This letter provides further details as to HBML's rationale for its conclusion that the appropriate regulatory process for the planned change is the Modification process set out at Part H of the Water Licence, rather than the amendment process set out in the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (the "*Waters Act*"). Specifically, this letter sets out:

- HBML's rationale for its conclusion that no amendments to the "Conditions" of the Water Licence are required to permit the proposed relocation of the fuel tanks;
- HBML's rationale for its conclusion that the Modification process set out at Part H of the Water Licence is applicable to the proposed relocation of the fuel tanks; and
- a review of the general relationship between modifications and amendments to water licences issued under the *Waters Act*.

The Nunavut Water Board has built a degree of flexibility into the Water Licence to allow for some project changes as detailed engineering and project planning

proceeds. The Modification process set out at Part H provides a process for the Board to review project changes such as the proposed relocation of the fuel tanks.

Both the NIRB process under the NLCA and the Water Licence allow for modifications to the project without requiring a further screening by NIRB, or a public hearing for a Water Licence amendment by the Water Board.

Under the NIRB process, under section 12.4.3 of the NLCA, NIRB considers whether a modification would “significantly modify the project”. In a letter to the Water Board dated July 18, 2007, NIRB concluded that adding a new additional fuel tank farm at Roberts Bay did not significantly modify the project, and did not require a further screening.

The relocation of fuel tanks from the plant site to the laydown area also does not significantly modify the project (subject to NIRB confirmation). The Water Licence also allows for Modifications where the Conditions of the Licence are still complied with and the Licence would not be in contravention of a Condition. The provision for Modifications is met in the case of the location of the three fuel tanks. No amendment of any Condition of the Licence is required.

There is no need to amend any “Condition” of the Water Licence

Under the *Waters Act* a water licence is required for either the use of waters (section 11) or the deposit of waste into waters (section 12).

Under Division 2 of the *Waters Act*, the *Waters Act* provides for an “application” to the Board for the issuance of a water licence (section 42) or for renewal of a licence (section 43.1(a)) or to “amend, for a specified term or otherwise, any condition of a licence” (section 43.1(b)) [emphasis added].

It is clear that an application to the Board is required if a licensee seeks to amend any Condition of a licence.

Conditions of licences are addressed in sections 70 through 75 of the *Waters Act*.

Under section 70, the Board may include Conditions relating to:

- “(a) the manner in which waters may be used;
- (b) the quantity, concentration and types of waste that may be deposited and the manner of depositing waste;
- (c) the studies to be undertaken, works to be constructed, plans, including contingency plans, to be submitted, and monitoring programs to be undertaken; and
- (d) any future closing or abandonment of the appurtenant undertaking.”

Section 71 addresses the purpose of Conditions, which are to minimize any adverse effects on waters or the existing use of waters.

Sections 72 and 73 address Conditions relating to the deposit of waste in waters.

Section 74 addresses Conditions concerning design, construction, operation and maintenance in relation to appurtenant undertakings.

The Doris North Water Licence contains Conditions relating to design, construction and operation of the Fuel Storage and Containment Facility – see Part D, paragraph 11:

- “11. The Licensee shall ensure that the construction and operation of the Fuel Storage and Containment Facility(s) meets, at a minimum, all applicable legislation and industry standards that include the following:
 - a. *Environmental Code of Practice for Aboveground Storage Tank Systems Containing Petroleum Products, 2003*; CCME, PN 1326; and
 - b. *National Fire Code, 1995*.
- 12. The Licensee shall discontinue quarry operations in Quarry #1 upon commissioning of the Fuel Storage and Containment Facility.”

As confirmed in the Notice of Modification, this Condition of the Licence respecting the standards for design, construction and operation of the Fuel Storage and Containment Facility will continue to apply to the relocated facility. As well, Condition 12 is met because HBML has discontinued quarry operations at Quarry #1 (blasting at the quarry is not compatible with fuel tanks).

HBML’s compliance with the Conditions of the Water Licence with respect to construction will also ensure that any excavated material and substrate will not have any effect on water quality.

The Doris North Water Licence also contains Conditions respecting the discharge of water from the Fuel Storage and Containment Facility – see Part G, paragraphs 22(e), (f) and (g):

- “22. The Licensee shall operate and maintain the Sumps in accordance with the following:
 - e. Water discharged from the Fuel Storage and Containment Facility Sumps at monitoring stations ST-5 and ST-6 shall not exceed the following effluent quality limits:

Parameter	Maximum Average Concentration (mg/L)	Maximum Concentration in any Grab Sample (mg/L)
pH	6.0-9.0	9.0
TSS	15	30
Total Oil and Grease	5	10
Total Lead	0.01	0.02
Benzene	0.37	-
Toluene	0.002	-
Ethyl Benzene	0.090	-

- f. Water from the Fuel Storage and Containment Facility Sump that is acceptable for discharge under Part G, Item 22(e) may be discharged to the tundra or as designated by an Inspector; and
- g. Sump water from the Landfill, Landfarm and Fuel Storage and Containment Facility that does not meet the criteria in Part G, Items 22(a), (c) and (e) respectively shall be directed to the Tailings Impoundment Area.”

As confirmed in the Notice of Modification, these Conditions of the Licence respecting the management and deposit of water will continue to apply with respect to the relocated Fuel Storage and Containment Facility.

The Modification process is appropriate

While the Water Licence is strict with respect to Conditions, it does provide for flexibility in relation to the appurtenant undertaking and facilities, so long as Modifications are done in a manner which continues to meet the Licence Conditions. In particular, Part H of the Water Licence addresses Conditions applying to Modifications to the Water Supply Facilities and Waste Disposal Facilities “provided that such Modifications are consistent with the terms of the Licence and the following requirements are met:

- “1.a. the Licensee has notified the Board in writing of such proposed Modifications at least sixty (60) days prior to beginning the Modifications;
- b. such Modifications do not place the Licensee in contravention of the Licence or the Act;
- c. such Modifications are consistent with NIRB Project Certificate;
- d. the Board has not, during the sixty (60) days following notification of the proposed Modifications, informed the Licensee that review of the proposal will require more than sixty (60) days; and

e. the Board has not rejected the proposed Modifications.”

The Notice of Modification dated March 9, 2010 shows how these requirements are met. In particular, the Notice confirms that:

“There will be no impact to water resulting from the Modification. There will be no associated increase in water consumption or waste water generation. No waste will be deposited to waters, nor will it be deposited under conditions in which the waste may enter waters in Nunavut.”

Note that any management of surface runoff or waste at the original location would be replaced by the equivalent at the new location (so no net change).

Appendix B to the Notice of Modification provides a list of the applicable Licence Conditions and confirms that those Conditions will continue to apply to the relocated Fuel Storage and Containment Facility.

While the definition of “Fuel Storage and Containment Facility” in Schedule A to the Water Licence refers to engineering drawings in the Water Licence Application Supporting Documents, the definition itself is not a “Condition” of the Water Licence. The definition is a description of the facilities and their location – and it is the purpose of Part H of the Water Licence to allow for Modifications to be made on notice to the Board, and without requirement for an amendment, so long as the Conditions of the Water Licence continue to be complied with. The relocation of the lined berm and sump to contain the “Fuel Storage and Containment Facility” would fall within the definition of a Waste Disposal Facility, for which Modifications are authorized under Part H of the Water Licence.

As referenced above, the project modifications brought to the attention of the Water Board by Miramar on June 8, 2007 are an example of the flexibility needed in developing the project. The June 2007 modifications included a new additional 5.7 million litre fuel tank within the footprint of Quarry 1 at Roberts Bay (see June 8, 2007 letter to the Water Board, at part 2(b)). The Nunavut Impact Review Board, after receiving comments from INAC, EC, Transport Canada and Health Canada confirmed, in a letter dated July 18, 2007, that the proposed modification was within the scope of the environmental assessment and therefore did not require additional screening.

HBML has forwarded the current Notice of Modification to the Nunavut Impact Review Board and has committed to confirm with that Board that the proposed Modification is consistent with the Project Certificate and that it will not require further NIRB review.

General relationship between modifications and amendments

It is to be expected that large projects such as mines will require some modification of facilities and layout as the design and construction process proceeds. Modifications of the Water Supply Facilities and Waste Disposal

Facilities (those facilities which are directly related to the use of water and the deposit of waste) are expressly authorized under Part H of the Water Licence so long as the Conditions of the Water Licence continue to be met. An argument can be made that Modifications to facilities other than Water Supply Facilities and Waste Disposal Facilities do not require notification to the Board under Part A. In this case HBML has taken a broad view of Part H and provided Notice. The written consent of the Board is not required under Part H – only that the Board has not “rejected” the proposed Modification. The Notice of Modification asks that the Board confirm that the location of the three fuel tanks is not rejected.

As no Conditions to the Water Licence require amendment, an application for an amendment to the Conditions and a public hearing process, should not be required under section 43.1(b) of the Water Licence. An amendment process, and a public hearing is not required for relocation of fuel tanks where the Licence Conditions will all still be met, and would not be an efficient use of the resources of the Board.

Distinction from Meadowbank modification

The current consideration by the Board of modifications to the Meadowbank Gold Project can be distinguished. In that case, Meadowbank proposed an “expansion” of its fuel storage capacity from 40 million litres to 60 million litres. There is no expansion proposed by HBML, and an expansion would not meet the definition of Modification. The relocation of the fuel tanks in relation to Doris North meets the definition of Modification under the Water Licence because it involves the introduction of new structures (the three additional fuel tanks at Roberts Bay) and the elimination of other structures (the fuel tanks at the plant site).

Conclusion

In our view, the proposed relocation of the fuel tanks and the Fuel Storage and Containment Facility, which can be done in compliance with all of the Conditions of the Water Licence, falls properly within the definition of a Modification, meets the requirements of Part H, and does not require an amendment to any Condition of the Licence.

It should be noted that the Board, under Part H, would have discretion to set reasonable terms and conditions applicable to the Modification where appropriate, and that, under Part H, paragraph 3, the Licensee is required to provide as-built plans and drawings of the Modifications within 90 days of completion of the Modification.

We are hopeful that this review of the structure and requirements of the *Waters Act* and of the Doris North Water Licence will assist the Board in its consideration and processing of the Notice of Modification, and confirming that the Modification is not rejected under Part H, paragraph 1(e).

Yours very truly,

LAWSON LUNDELL LLP

A handwritten signature in black ink, appearing to read 'Brad Armstrong', is written over the printed name.

Brad Armstrong

SBA/djm

cc: Teresa Meadows