



**NUNAVUT WATER BOARD**

**WATER LICENCE NO: 2AM-DOH1323**

**REASONS FOR DECISION INCLUDING RECORD OF  
PROCEEDINGS**

# NUNAVUT WATER BOARD

In the Matter of:

Applicant: Hope Bay Mining Limited (subsequently assigned to TMAC Resources Inc. on June 18, 2013)

Subject: Application for Renewal and Amendment to Existing Type “A” Water Licence 2AM-DOH 0713

Date: August 15, 2013

Precedence: Where there is any inconsistency or conflict between the *Nunavut Land Claims Agreement (Agreement)* and the *Nunavut Waters and Nunavut Surface Rights Tribunal Act (NWNSRTA)*, the *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 Land Claims Agreement Act*, the *NWNSRTA* prevails to the extent of the inconsistency or conflict.



**Nunavut Water Board - Record of Proceeding/Reasons for Decision:  
2AM-DOH1323 Type A – Licence Amendment and Renewal Application**

**RECORD OF PROCEEDINGS**

Applicant: TMAC Resources Inc. (via assignment from original Applicant and Licensee Hope Bay Mining Limited)

Address: Suite 901  
372 Bay Street  
Toronto, Ontario  
M5H 2W9

Purpose: Application for Renewal and Amendment of Type “A” Water Licence 2AM-DOH1323 Mining and Milling Undertaking

Application Received on: August 10, 2012

Application Received from: Chris Hanks, Vice President, Environmental Affairs, Hope Bay Mining Ltd.

Date of Written Public Hearing: Friday, July 12, 2013

Date Board Confirmed Public Hearing Record Closed: Wednesday, July 17, 2013

Nunavut Water Board Panel Members (P7 Doris North Panel):

Chairman	T. Kabloona
Member	C. Adjun
Member	A. Ningark

Nunavut Water Board Staff:

Executive Director	D. Côté
Board Secretary/Interpreter	B. Kogvik
Director Technical Services	D. Hohnstein
Technical Advisor (Public Hearings)	S. Aredes
Assistant Technical Advisor	E. Skiby
Manager of Licensing	P. Beaulieu
Licensing Administrator	R. Ikkutisluk
Legal Counsel	T. Meadows, (Miller Thomson LLP)

Interpreter(s): N/A

Court Reporter: N/A



**Nunavut Water Board - Record of Proceeding/Reasons for Decision:  
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**Applicant:**

TMAC Resources Inc.

- C. Farrow, Chief Executive Officer, TMAC Resources Inc.
- C. Hanks, Vice President, Environmental Affairs, Hope Bay Mining Ltd.
- A. Buchan, Manager of External and Community Affairs, TMAC Resources Inc.
- L. Bowes-Lyon, Tenure and Permitting Co-ordinator, Hope Bay Mining Ltd.
- M. Rykaart, Geotechnical Engineer, SRK Consulting
- D. Chubb, Impact Assessment and Planning, ERM
- C. Kowbel, Legal Counsel, Lawson Lundell

**Parties:**

Nunavut Tunngavik Inc.

- J. Ehaloak, Environment Co-ordinator
- G. Hakongak, Senior Advisor

Kitikmeot Inuit Association

- J. Roesch, Senior Hope Bay Project Officer

Aboriginal Affairs and Northern  
Development Canada

- D. Abernethy, Regional Coordinator, Water Resources Division, Nunavut Regional Office
- E. Paul, Water Resources Officer, Nunavut Regional Office

Participants Appearing at Public  
Hearing:

N/A

Written Record of Submissions:

Available from the Board's public registry using the following  
(username: public, password: registry):

<ftp://nunavutwaterboard.org/1%20PRUC/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-DOH0713%20HBML/2%20ADMIN/4%20HEARINGS/>

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## **Nunavut Water Board - Record of Proceeding/Reasons for Decision: 2AM-DOH1323 Type A – Licence Amendment and Renewal Application**

### **REASONS FOR DECISION**

#### **Executive Summary**

This decision is in relation to an Application before the Nunavut Water Board (NWB), by TMAC Resources Inc. (originally submitted by Hope Bay Mining Limited), for the renewal, consolidation of previous amendments and specified amendments to the existing Type “A” Water Licence 2AM-DOH0713. The Application is for the renewal of the existing Water Licence for a 10-year term to authorize the continued use of water (maximum usage estimated at 480,000 cubic metres annually, which is unchanged from the existing Licence) and to deposit waste in support of the Doris North Project. The Doris North Project involves the construction, operation and closure of a small underground gold mine with an average throughput of 720 tonnes per day and a two year mine life and is located approximately 125 km southwest of Cambridge Bay and 75 km north of Umingmaktok, within the Kitikmeot Region of Nunavut.

Given that this Application involved the renewal of an existing Type “A” Water Licence on substantially similar terms and conditions as the existing Water Licence, the Nunavut Water Board, on the basis of comments provided by intervening parties and the public, determined that the Application could be processed on the basis of a written rather than an in person Public Hearing. On the basis of the written submissions and evidence filed with the Board, the Board has decided the following:

- To grant the Applicant’s request to renew the existing Type “A” Water Licence in accordance with the terms and conditions outlined in the attached Decision and Licence;
- Specific terms and conditions of note include the following:
  - the term of the Licence is 10 years, with the requirement that the Licensee apply for renewal of the Licence one year before the Licence is set to expire;
  - the Applicant will be required to post security in the amount specified under the Licence, in the form required by the *Nunavut Waters Regulations*;
  - the Licence consolidates the amendments and modifications to the existing Water Licence 2AM-DOH0713 granted by the Board during the term of that Licence;
  - recognizing that the project is currently in a care and maintenance phase and that it is appropriate to modify some of the terms and conditions of the Licence in relation to general monitoring and water management requirements to reflect the difference between the Licensee’s activities while in care and maintenance as



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opposed to active operation, the Board has included terms and conditions expressly applicable to the care and maintenance phase of the project. Upon returning to active operations or undertaking permanent closure, the care and maintenance provisions of the Licence will no longer apply; and

- the Applicant is reminded that compliance with the terms and conditions of this Licence does not absolve the Licensee from responsibility for compliance with all applicable legislation, guidelines and directives, including, without limitation, the requirements to obtain the necessary authorizations from agencies such as the Nunavut Impact Review Board, the Kitikmeot Inuit Association, Aboriginal Affairs and Northern Development Canada, Environment Canada, the Department of Fisheries and Oceans and Natural Resources Canada.





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### **SECTION I: BACKGROUND AND REGULATORY HISTORY**

#### **Application**

The Application before the Nunavut Water Board (NWB), by TMAC Resources Inc. (originally submitted by Hope Bay Mining Limited as outlined below), is for the renewal and specified amendments to the existing Type “A” Water Licence 2AM-DOH0713 (the Existing Licence) for a 10-year term (the Application). The Application sought a renewed and amended licence to authorize the use of water (maximum usage estimated at 480,000 cubic metres annually, unchanged from the Existing Licence) and to deposit waste in support of the Doris North Project (the Project). The Application was originally submitted by Hope Bay Mining Limited (HBML) and upon the acquisition of the interest of HBML in the Project by TMAC Resources Inc. and the completed assignment of the Existing Licence from HBML to TMAC Resources Inc., (TMAC or the Applicant) on June 18, 2013, the Application for renewal/amendment was formally assumed by the new Licensee, TMAC.

The original Application documents received on August 10, 2012 from HBML included:

- Cover letter dated August 10, 2012, Chris Hanks, HBML (Newmont) to NWB;
- Application form;
- Application for Water Licence Amendment;
- Appendix A, Summary of the Application in English;
- Appendix B, Summary of the Application in Inuktitut;
- Appendix C, Newmont’s 2011 Annual Report;
- Appendix D, HBML’s Certificate of Incorporation and List of Directors;
- Appendix E, Compliance Status;
- Appendix F, Type A Water Licence 2AM-DOH0713 (Marked to show past amendments and suggested changes);
- Appendix G, SRK water licence amendments supporting memo;
- Appendix H, Windy Lake Fresh Water Intake; and
- Appendix I, Doris North Landfill Amendment supporting materials.

Additional information received on October 23, 2012 to be included in the application information for review, included:

- Emergency Response Plan, Hope Bay Mining Ltd., Care & Maintenance, October 2012;



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- Hope Bay Mining Ltd., Spill Contingency Plan, HB-ER-ENV-MP-001, October 2012 (Rev 5); and
- Hope Bay Mining Ltd., Waste Water Treatment Management Plan, HB-WM-OPS-MP-004, October 2012 (Rev 3).

On November 9, 2012 the original Applicant, HBML, responded to the NWB's request for review and comment and provided a submission (renewal and amendment update) with respect to the type of hearing to be held and other items related to various amendment applications and plans submitted during the previous year.

Further, on November 24, 2012 HBML submitted correspondence in relation to initial comments received and specific information requests of the Board and the intervening parties. These documents included:

- Cover letter;
- Information Request response table;
- Roberts Bay and Doris fuel tank farm tank volumes; and
- Doris North winter care and maintenance inspection checklist.

Finally, in response to technical comments received during the full review of the Application, TMAC (HBML) submitted to the NWB a summary of their responses to the various issues raised in the submissions from interested parties. As well, included in the response as support for some of these concerns, was a technical memo from SRK Consulting Ltd. on the assessment of pollution pond discharge to TIA, November 2011.

All information pertaining to the above-mentioned Application, including the supporting documents for the Project, is available on the NWB's FTP site and can be accessed using the following link (user name: "public", password: "registry"):

<ftp://nunavutwaterboard.org/1%20PRUC/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-DOH0713%20HBML/1%20APPLICATION/2012%20Amend%20Renew/>



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### **The Project**

The Project, as it was assessed by the Nunavut Impact Review Board<sup>1</sup> and licensed by the NWB in 2007,<sup>2</sup> involves the construction, operation and closure of a small underground gold mine with an average throughput of 720 tonnes per day and a two year mine life. As originally proposed, the mine is projected to produce approximately 311,000 ounces of gold from 460,000 tonnes of ore. The mill, crushing plant, fuel storage tank farm, camp, office complex, workshops, power generation plant, wastewater treatment plant and all other operational mine infrastructure will be located in a central location adjacent to the underground mine adit. Processing of the ore would take place on site, with the gold being shipped off site by air to a commercial refiner. The project will be self-sufficient and have a project footprint of approximately 54 hectares.

The site is remote and will not have any permanent or winter roads that would link it to neighboring communities or facilities. An all-weather road currently connects the plant site and the Roberts Bay sealift landing site laydown area as well as the Windy Lake exploration area.

Tailings produced during the milling process will be deposited in Tail Lake about 5 km from the proposed mill location. Mill tailings will be treated in a water treatment plant within the mill to destroy residual cyanide and precipitate heavy metals before the tailings are discharged into Tail Lake. The water in Tail Lake is planned to be discharged annually to Doris Creek.

### **Existing Licence history**

The original Type “A” Water Licence 2AM-DOH0713 was issued by the NWB on September 17, 2007 and was subsequently approved by the Minister of Indian and Northern Affairs Canada (as the Minister was known then, the Ministry has since become Aboriginal Affairs and Northern Development Canada or AANDC) on November 5, 2007 for a term of 6 years. The Existing Licence will expire on September 30, 2013.

**Amendment No. 1** was issued by the NWB on August 4, 2010 and was approved by the Minister of Indian and Northern Affairs Canada on September 17, 2010. This amendment was for the relocation of the Explosives mixing and storage facility.

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<sup>1</sup> See Nunavut Impact Review Board, Final Hearing Report for the Miramar Hope Bay Ltd. Doris North Gold Mine Project (Project), March 6, 2006; the letter from the Hon. J. Prentice, Minister of Indian and Northern Affairs Canada (as AANDC then was) to E. Copland, NIRB Acting Chair, July 28, 2006 accepting the NIRB’s Final Hearing Report; and Project Certificate NIRB No.: 003 for the Doris North Gold Mine Project Proposal, issued September 15, 2006.

<sup>2</sup> Nunavut Water Board, Reasons for Decision for 2AM-DOH0713, Applicant: Miramar Hope Bay Ltd., issued September 19, 2007.



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**Amendment No. 2** was issued by the NWB on February 15, 2011 and was approved by the Minister of Indian and Northern Affairs Canada on March 24, 2011. This amendment to the Existing Licence authorized the expansion of the fuel storage and containment facility, the expansion of the airstrip and bypass road and also revised the location of the cyanide/reagent storage facility.

**Amendment No. 3** was issued by the NWB on January 18, 2012 and was approved by the Minister of Aboriginal Affairs and Northern Development Canada on February 29, 2012. This amendment was for the Waste Rock and Ore Management – Storage and use, Doris North Project.

**Assignment of Licence 2AM-DOH0713** to TMAC Resources Inc. was completed on June 18, 2013. An application for the assignment of the Licence from Hope Bay Mining Limited to TMAC Resources Inc. was received by the NWB on February 12, 2013. The transfer of ownership of the Hope Bay Gold Project (including the Doris North Project) to TMAC was completed on March 12, 2013.

### **Modifications**

A number of modification requests were also received by the NWB during the term of the Licence. Modifications to Licence 2AM-DOH0713 included:

- April 8, 2009; a modification request to the potable water treatment system, Doris Camp, Doris North Project; Licence 2AM-DOH0713, approval May 11, 2009;
- April 14, 2010, a modification request to revise the location of the portal entrance, Licence 2AM-DOH0713, approval July 30, 2010;
- August 9, 2011, a modification request for the expansion of the fuel storage facility, Licence 2AM-DOH0713, approval November 14, 2011; and
- October 5, 2011, a modification request for the Airstrip Expansion and Bypass Road Design, Licence 2AM-DOH0713, to remove the separate bypass road and include an 8 metre wide attached bypass road along the east edge of the expanded airstrip. In a letter dated October 24, 2011, the NWB informed HBML that the review of the modification request would require more than the sixty (60) days as per Part H, Item 1(d) of the Licence and the request was distributed to interested persons for comment for a thirty (30) day period. Although the Board did not issue formal written notice, final approval of the modification was deemed to be in effect on December 23, 2011.



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### Regulatory History

The Nunavut Planning Commission provided the NWB with confirmation on November 17, 2010, that the Doris North Project is outside both the Keewatin and North Baffin Regional Planning boundaries. Consequently, as there are no land use plans in place for the project area, no conformity determination is required by the NPC.<sup>3</sup>

With respect to the requirements for screening of the Application by the Nunavut Impact Review Board, the Board notes that as set out recently in *Draft 1 of the NIRB Technical Guide Series: Authorizing Agencies' Guide*<sup>4</sup> where an application to the NWB involves the renewal of a licence granted to a project proposal previously screened by the NIRB,<sup>5</sup> the application may be exempt from the requirement for NIRB screening under the NLCA, Article 12, Section 12.4.3<sup>6</sup> if the following criteria are met the application involves:

- the **same project activities** as proposed in the original project proposal previously screened by the NIRB;
- the activities will be taking place in the **same area** as specified in the original project proposal previously screened by the NIRB;
- there have been **no substantial changes** to the environment or cumulative effects in the area of the project activities since the project proposal was screened by the NIRB;
- **no new or updated** approved Land Use Plans have become applicable to the area of the project activities since the original project proposal was screened by the NIRB; and
- there are **no significant changes** to the components, activities or project proposed in the application from those included in the original project proposal previously screened by the NIRB.

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<sup>3</sup> See Article 13, Part 4, Section 13.4.6 of the Nunavut Land Claims Agreement (NLCA).

<sup>4</sup> Nunavut Impact Review Board, *Draft 1, NIRB Technical Guide Series: Authorizing Agencies' Guide*, April 2013, available on-line: <http://ftp.nirb.ca/04-GUIDES/03-NEW%20GUIDES/04-DRAFT%20TECHNICAL%20GUIDES/>

<sup>5</sup> See Nunavut Impact Review Board, Final Hearing Report for the Miramar Hope Bay Ltd. Doris North Gold Mine Project (Project), March 6, 2006.

<sup>6</sup> Article 12, Part 4, Section 12.4.3 of the NLCA states:

Any application for a component or activity of a project proposal that has been permitted to proceed in accordance with these provisions shall be exempt from the requirement for screening by NIRB unless:

- (a) such component or activity was not part of the original proposal; or
- (b) its inclusion would significantly modify the project.



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By correspondence issued on October 10, 2012, the NWB invited comment from the NIRB on the Application, type of Public Hearing to be held and any information requests of the NIRB arising from the Application. The NIRB did not advise the NWB of any additional information requirements associate with the Application.

The NWB, having determined that the Application was exempt from the requirement for screening by the NIRB in accordance with the criteria listed above, proceeded to process the Application for renewal and amendment of the Existing Licence without additional NIRB screening. On February 27, 2013, the Board acknowledged receipt of the \$30.00 application fee from the Applicant.<sup>7</sup>

As outlined under the description of the Application in the preceding section, the HBML and later the Applicant supplemented the original Application with materials in response to various information requests from the Board and the intervening parties. On May 6, 2013 the Board issued the Notice of Application and Notice of Public Hearing<sup>8</sup> to the Applicant and the Distribution List and invited interested persons to make submissions to the Board regarding the Application on or before June 6, 2013. In this same correspondence, the NWB requested the parties commence with their technical review of the Application and provide any technical review comments to the Board on or before June 6, 2013. In response to this request, the NWB received submissions from the Kitikmeot Inuit Association (KIA), Aboriginal Affairs and Northern Development Canada (AANDC) and Environment Canada (EC).

Pursuant to Article 13 Clause 13.3.6 of the Nunavut Land Claims Agreement and s. 29<sup>9</sup> of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act* (NWNSRTA), the Board delegated its power to dispose of all matters relating to the Application, including the conduct of the Public Hearing, to the Doris North Panel (P7 or the Panel) of the Board. Following the technical review of the file and receipt of submissions from KIA, AANDC and EC and through direction given from the Panel, the NWB scheduled a Technical Meeting/Pre-Hearing Conference (TM/PHC), on June 18, 2013, to be conducted by the Board's staff and held via teleconference.

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<sup>7</sup> Letter to Christine Kowbel and Lawson Lundell, Barristers and Solicitors, from Megan Porter, Licensing Administrator Assistant, NWB, dated February 27, 2013. Re: Acknowledgement and Receipt of Application Fee – Doris North Project.

<sup>8</sup> As required under ss. 55(1) and (2) of the *Nunavut Waters and Nunavut Surface Rights Tribunal Act*, S.C. 2002, c. 10 (NWNSRTA).

<sup>9</sup> 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.





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As is the Board's normal practice with TM/PHC meetings, Panel Members were not present, and the meetings were conducted by the Board staff. The TM was chaired by the Board's Director of Technical Services, David Hohnstein and the PHC was chaired by the Board's Executive Director, Damien Côté. The purpose of these meetings was to bring together the Applicant, intervening parties and the NWB technical staff to discuss issues raised during the technical review of the Application and determine the next steps in the licensing process through the Pre-Hearing Conference.

Through the discussions at the Technical Meeting, TMAC committed to providing a further response and clarification on three items raised by AANDC. On June 21, 2013, a memorandum from Chris Hanks, representing TMAC was received and it was confirmed that TMAC had provided, through extensive discussion, a satisfactory response to AANDC's comments. Also on June 21, 2013, following the Board's receipt of the submission from TMAC, David Abernethy, Regional Coordinator with AANDC, provided an e-mail to all participants in the TM confirming that AANDC had determined that TMAC's follow up teleconference with AANDC and subsequent submission had provided an adequate response to AANDC's comments, #8, 9 and 10 (of their submission).

On June 24, by Motion #2013-11-03, the members of the Panel, approved the release of the Pre-Hearing Conference Decision Report along with the procedural direction for the written Public Hearing associated with the Application. The PHC Decision Report detailed the Technical Meeting discussions, issues raised in the submissions and confirmed the next steps in the licensing process. The PHC Decision Report confirmed that the date for the written form Public Hearing would remain July 12, 2013 as initially identified by the Board in the Public Notice issued on May 6, 2013. The PHC Decision Report also detailed the timelines for the final written submissions of intervening parties and the Applicant prior to the date set for the Public Hearing.

With respect to the written Public Hearing, further submissions were received from the Kitikmeot Inuit Association (KIA) and Aboriginal Affairs and Northern Development Canada (AANDC) in accordance with the deadlines established in the Board's PHC Decision Report. These submissions reiterated the original comments submitted for the technical review phase and did not identify any new issues. Environment Canada did not submit anything further to their original comments in June, 2013.

On July 8, 2013, TMAC provided a response with respect to the submissions by the KIA and AANDC, and indicated that they had no further items to address.



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By the close of the date of the Public Hearing on July 12, 2013, no further submissions were received, and on July 17, 2013, the NWB licensing staff issued formal correspondence indicating that with all submissions having been received, the Record for the Public Hearing closed on July 12, 2013 and the matter had been remitted to the Panel for a decision.

A complete list of submissions and correspondence in support of this Application is provided in APPENDIX B – List of Submissions and Correspondence. All listed submissions and correspondence associated with the Application have been placed on the Board's public registry and are available from the NWB's ftp site using the access username of "public" and the password of "registry" (without the quotes) at the following link:

<ftp://nunavutwaterboard.org/1%20PRUC/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-DOH0713%20HBML/>





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**SECTION II: SUMMARY OF FINAL HEARING SUBMISSIONS OF THE PARTIES**

**Kitikmeot Inuit Association (KIA)**

The KIA is a Designated Inuit Organization under the Nunavut Land Claims Agreement, representing the rights and values of the Inuit within the Kitikmeot Region of Nunavut in respect of rights to water and wildlife compensation, landowner rights and negotiation of an Inuit Impact and Benefit Agreement.

The KIA provided technical review comments in June 2013<sup>10</sup> which focused primarily on comments with respect to the plans submitted during the course of the Existing Licence and recommendations for revisions of plans during the term of a renewed Licence. Overall, the KIA indicated that they did not have significant technical issues with the Application, and indicated that the focus of their comments were on issues arising from changes to the project that are primarily attributable to the project currently being maintained in a care and maintenance phase.

The KIA provided comments on several areas of the application and focused their review on the following:

- AANDC Inspection Reports;
- Response to AANDC Inspection Reports;
- Waste water shutdown procedures;
- Specific comments on the plans required under the Licence including:
  - Waste water Treatment Management Plan
  - Spill Contingency Plan
  - Emergency Response Plan
  - QA/QC Plan
  - Interim Water Management Plan
  - Revised Monitoring and Follow-up Plan;
- Hope Bay Project Closure and Reclamation Cost Estimate – January 2013;
- Annual Report – 2012; and
- 2012 Aquatic Effects Monitoring Plan – Report.

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<sup>10</sup> See Letter and attachments provided to Phyllis Beaulieu, Manager of Licencing, NWB, from John Roesch, P. Eng., Senior Hope Bay Project Officer, KIA, dated June 6, 2013, Re: Water Licence No.2AM-DOH0713; Application for the Amendment and Renewal of Type “A” Water Licence: Notice of Application.



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In the KIA's final submission of June 24, 2013,<sup>11</sup> the KIA indicated that other issues identified could be managed by TMAC in updates of plans following the issuance of an amended/renewed licence.

### Water Compensation

In the KIA's final submission of June 24, 2013, the KIA indicated that the level of water compensation required by the KIA for the Doris North Project remains unchanged from the Existing Licence and there are no outstanding water compensation issues.

### Term of Licence

In the KIA's final submission of June 24, 2013, the KIA indicated that the requested term of licence of 10 years was acceptable to the KIA.

### **Aboriginal Affairs and Northern Development Canada (AANDC)**

Aboriginal Affairs and Northern Development Canada (AANDC) has a broad mandate for the co-management of water resources and the management of Crown land in Nunavut under the following applicable law and policy: the *Department of Indian Affairs and Northern Development Act*,<sup>12</sup> the *Nunavut Land Claims Agreement* and the *Nunavut Land Claims Agreement Act*,<sup>13</sup> the *Territorial Lands Act*,<sup>14</sup> and applicable *Regulations*,<sup>15</sup> the *Nunavut Waters and Surface Rights Tribunal Act*,<sup>16</sup> the *Nunavut Waters Regulations*,<sup>17</sup> the *Canadian Environmental Assessment Act*,<sup>18</sup> and the *Mine Site Reclamation Policy for Nunavut*.<sup>19</sup> AANDC administers Crown land and resources and enforces regulatory permits affecting land and water resources in Nunavut.

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<sup>11</sup> Letter to Phyllis Beaulieu, Manager of Licencing, NWB from John Roesch, P.Eng., Senior Hope Bay Project Officer, KIA, dated June 24, 2013, Re: KIA Submission on the Nunavut Water Board on Water Licence No.2AM-DOH0713; Application for the Amendment and Renewal of Type "A" Water Licence.

<sup>12</sup> R.S.C. 1985, c. I-6.

<sup>13</sup> S.C. 1993, c. 29.

<sup>14</sup> R.S.C. 1985, c. T-7.

<sup>15</sup> See for example *Territorial Land Use Regulations*, C.R.C. c. 1524 and the *Northwest Territories and Nunavut Mining Regulations*, C.R.C. c. 1516.

<sup>16</sup> S.C. 2002, c. 10.

<sup>17</sup> S.O.R./2013-69.

<sup>18</sup> S.C. 1992, c. 37.

<sup>19</sup> Minister of Indian Affairs and Northern Development, (Ottawa: Minister of Public Works and Government Services Canada, 2002) available on-line: [http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/recpolnuna\\_1100100036043\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/recpolnuna_1100100036043_eng.pdf).



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In the various written submissions and responses to the Applicant's submission of supplementary information,<sup>20</sup> AANDC identified several issues for consideration by the NWB.

### Surface Water

AANDC suggested that all drainage facilities should be referenced and included in a revised Water Management Plan for the site.

### Water Management and Discharge

AANDC commented on the following aspects of the site water management and water discharges:

- Monitoring of the Doris North Camp Area Diversion Berm;
- Management of Contact runoff and underflow (TMAC committing to preparing a revised Water Management Plan to address concerns raised);
- AANDC suggested that TMAC should adhere to a minimum 10 days' notice period prior to any planned discharge rather than the 5 days' notice period proposed by TMAC;
- AANDC indicated that there should be a recalibration of the water balance and water quality model and annual model assessments prior to the commencement of ore processing, and conceded that while in care and maintenance, the frequency suggested by TMAC (annual rather than monthly) is adequate;
- AANDC commented on the revisions to water quality monitoring program (discharge of water from the Tailings Impoundment Area, TIA), reduction in the amount of sampling during care and maintenance proposed by TMAC. AANDC noted that although the reduced levels may be adequate during care and maintenance, to ensure that TMAC knows the water quality of water entering the storage area and ensures there is minimal contamination from contact sources, AANDC noted that when the mine becomes operational, the monitoring program should be ramped up to reflect that the tailings area will be used for storage of tailings.
- AANDC commented on the triggers for increases in water sampling from the TIA during discharge and suggested an increase in frequency of sampling when water

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<sup>20</sup> See Letter and attachments provided to Phyllis Beaulieu, Manager of Licencing, NWB, from David Abernethy, Regional Coordinator, AANDC, dated June 6, 2013 Re: Type 'A' Water Licence Number 2AM-DOH0713 – TMAC Resources Inc. – Doris North Gold Project – Kitikmeot Region – Amendment and Renewal Application; Email to ckowbel@lawsonlundell.com, tmeadows@millerthomson.com, Chris Hanks, Lea-MarieBowes-Lyon, dts@nunavutwaterboard.org, Phyllis Beaulieu, from David Abernethy, Regional Coordinator, AANDC, dated June 21, 2013, Subject: Re: Hope Bay response on questions AANDC 8 9 & 10; 60; and letter and attachments to Phyllis Beaulieu, Manager of Licencing, NWB, from David Abernethy, Regional Coordinator, AANDC, dated July 2, 2013 Re: Water Licence Type "A" #2AM-DOH0713 – Doris North Gold Project – TMAC Resources Inc. – Licence Amendment and Renewal Application – Kitikmeot Region Final Written Submission.



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quality results are within 25% of the compliance level and deviating more than 20% of the average concentration of that parameter.

- AANDC indicated that they had no issues with the Applicant's requested amendment to the licence to permit the discharge of treated sewage effluent to either the tundra location or to the TIA.

Conditions during Care and Maintenance

AANDC identified that there should be specific terms and conditions associated with the project while it is being kept in a care and maintenance phase:

- AANDC would still like to see continued on-going monitoring of project infrastructure, particularly water and hazardous material containment areas;
- AANDC would agree to a reduction in collection of thermal monitoring data during Care and Maintenance (with continuous data from the Tail Lake North Dam thermistor loggers). However, AANDC would expect to see monitoring of containment structures such as the Pollution Control Pond and Sedimentation Pond during periods of water management (monthly).
- AANDC indicated the Applicant should be required to submit revised management plans and monitoring plans within three months, whenever there is a change from operations, care and maintenance.

Ongoing Monitoring

AANDC indicated the Applicant should be required to continue to provide monthly monitoring reports while in care and maintenance and through any future construction phases in order to document status and potential environmental liabilities.

Closure and Reclamation Planning

With respect to the requirements to file closure and reclamation plans, AANDC indicated that an Interim Closure and Reclamation Plan should be required to be submitted within six months of the commencement of operations (ore processing). Further, AANDC indicated that regardless of the phase of the project a revised/updated closure and reclamation plan should be submitted, at minimum, once every three (3) years to reflect site changes, project monitoring results and the phase of the development of the project.

Security



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AANDC confirmed that the revised liability estimate of \$13,090,000 (increased from \$11,714,000 in the Existing Licence) is adequate for the project given that it is currently not operating and the Applicant has not yet commissioned or started operations. AANDC also noted that HBML has confirmed that the current security provided by HBML will continue to be maintained by HBML until such time as TMAC has equivalent security in place with AANDC.

AANDC also indicated that a closure cost estimate be provided along with an Interim Closure and Reclamation Plan, within six months of “Operations” (as defined in the Licence).

### Term of Licence

Renewing the licence term for 10 years is adequate given the proposed activities, monitoring requirements, and consistency with the terms of licences granted by the NWB in other Type ‘A’ Water Licences. However, AANDC also noted that it would not support a longer term than 10 years because there is significant value in performing regular public reviews of undertakings of this magnitude.

### Other

The final submission from AANDC contained a summary table (attached as an appendix), that itemized the issues raised by AANDC through the technical review process and the clarifications/resolutions that were brought forward through discussions with the Applicant during the overall licensing process. The table provided generally indicates that all issues have been addressed and resolved, or can be addressed through conditions in a renewed licence.



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### **Environment Canada (EC)**

The primary relevant legislation and standards that Environment Canada (EC) administers or adheres to and that are applicable to the Application are the *Department of the Environment Act*,<sup>21</sup> *Canadian Environmental Protection Act, 1999*<sup>22</sup> and the pollution prevention provisions of the *Fisheries Act*.<sup>23</sup> EC is a science-based Department responsible for leading implementation of the Government of Canada's environmental agenda that is committed to contributing to the realization of sustainable development in Canada's North. The Department focuses on the provision of scientific expertise for incorporation into decisions on developments, such that all parties, by working together, can ensure that there is minimal impact on the natural environment and that ecosystem integrity is maintained and preserved for future generations.

EC filed a formal submission<sup>24</sup> to the NWB on June 6, 2013 in response to a request from the NWB for written submissions with respect to the technical review of the licence application by TMAC. At that time, EC indicated that it had no comments on the Application submitted. Having no technical comments and raising no technical issues, EC did not participate in the Technical Meeting/Pre-Hearing Conference held in respect of the Application and also did not provide a final written submission for the Public Hearing by the July 2, 2013 deadline applicable to interveners providing final written submissions.

### **SECTION III: SUBMISSIONS BY OTHER INTERVENING PARTIES OR MEMBERS OF THE PUBLIC**

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

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<sup>21</sup> R.S.C. 1985, c. E-10.

<sup>22</sup> S.C. 1999, c. 33.

<sup>23</sup> R.S.C. 1985, c. F-14.

<sup>24</sup> Letter to Phyllis Beaulieu, Manager of Licensing, NWB from Jane Fitzgerald, Environmental Assessment Coordinator, EC, dated June 6, 2013, Re: 2AM-DOHO713 Application for Amendment and Renewal of Type A water licence: Notice of Application.



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**SECTION IV: JURISDICTION OF THE BOARD**

This Board has jurisdiction over this Application pursuant to Division 2 of the NWNSRTA.<sup>25</sup> Relevant sections in that Division allow the Board to issue a licence,<sup>26</sup> amend a licence,<sup>27</sup> or in certain circumstances, cancel a licence.<sup>28</sup> In deciding to issue a licence or engage in any other statutory function, the Board must follow the objects of the governing legislation, which are:

“... to provide for the conservation and utilization of waters in Nunavut, except in a national park, in a manner that will provide the optimum benefit from those waters for the residents of Nunavut in particular and Canadians in general.”<sup>29</sup>

In setting the Terms and Conditions of a licence the Board is guided by these objects and also by the Project Certificate issued by the Nunavut Impact Review Board that addresses effects and mitigation measures applicable to the use of water and deposit of waste in a particular case.<sup>30</sup> The Board must meet its statutory duty to make *all* reasonable efforts to minimize *any* adverse effects on aquatic ecosystems. Reading several of the Articles of the NLCA together,<sup>31</sup> the Board relies on the broad definition of “ecosystemic” found in Article 12, Section 12.1.1. of the NLCA, requiring not only the NIRB but also the NWB to ensure that all components of the ecosystem, such as fish and fish habitat, are protected within the parameters of s. 71 of the NWNSRTA.

As with all applications considered by the Board, the burden of proof rests with the Applicant to demonstrate that the Applicant’s request for a water licence should be granted. In addition, the NWB Rules of Practice state: “[a]ny party offering evidence before the Board shall have the burden of introducing sufficient and appropriate evidence to support its position.”<sup>32</sup> Where intervening parties, community representatives and the public present no evidence supporting or rejecting the Applicant’s evidence, the NWB will base its decision on its own assessment of the Applicant’s request.

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<sup>25</sup> Sections 42-81 of the NWNSRTA.

<sup>26</sup> See ss. 42, 48, 55, 56, and 70 of the NWNSRTA.

<sup>27</sup> See s. 43(1)(b) of the NWNSRTA.

<sup>28</sup> See s. 43(1)(c) of the NWNSRTA.

<sup>29</sup> See s. 35 of the NWNSRTA.

<sup>30</sup> See the NWB’s implementation obligations as set out in Article 12, Section 12.9.7 of the NLCA and see the Project Certificate NIRB No.: 003 for the Doris North Gold Mine Project Proposal, issued September 15, 2006.

<sup>31</sup> This approach is consistent with the direction provided in Article 2, section 2.9.1 of the NLCA.

<sup>32</sup> Section 23.1 of the Nunavut Water Board “Rules of Practice and Procedure for Public Hearing” (May 11, 2005).





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### **SECTION V: REQUIREMENTS OF THE NWNSRTA, NWR AND NLCA**

#### **Objects of the Board and its Relationship to other Bodies**

##### Land Use Planning

As noted in the discussion of the regulatory history, the Nunavut Planning Commission (NPC) provided the NWB with confirmation that the Doris North Project is outside both the Keewatin and North Baffin Regional Planning boundaries and as there were no land use plans in place for the project area, no conformity determination was required by the NPC.<sup>33</sup> On this basis, the NWB considered the requisite land use planning requirements of the NLCA to be fulfilled such that the NWB could process the Application and consider the renewal and amendment of the Existing Licence.

##### Environmental Assessment

As outlined briefly in the section of this decision discussing the regulatory history of the file, as the Nunavut Impact Review Board has previously screened the Doris North Project<sup>34</sup> and as the Application did not involve any substantive changes to the project proposal as originally screened, further screening by the NIRB was not required<sup>35</sup> before the NWB could process the Application.

The NIRB Project Certificate has several conditions relating directly or by implication to the water licence, including conditions related to tailings disposal in Tail Lake,<sup>36</sup> Tail Lake water quality monitoring and management,<sup>37</sup> water quality management in general and discharge criteria,<sup>38</sup> methodology for testing quarried rock for acid generating and metal leaching potential,<sup>39</sup> closure and reclamation planning<sup>40</sup> and various commitments contained in the List of Commitments attached to the Project Certificate as Appendix A.<sup>41</sup> The NWB confirms that the

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<sup>33</sup> See Article 13, Part 4, Section 13.4.6 of the Nunavut Land Claims Agreement (NLCA).

<sup>34</sup> See Nunavut Impact Review Board, Final Hearing Report for the Miramar Hope Bay Ltd. Doris North Gold Mine Project (Project), March 6, 2006, the letter from the Hon. J. Prentice, Minister of Indian and Northern Affairs Canada (as AANDC then was) to E. Copland, NIRB Acting Chair, July 28, 2006 accepting the NIRB's report and Project Certificate NIRB No.: 003 for the Doris North Gold Mine Project Proposal, issued September 15, 2006.

<sup>35</sup> Nunavut Land Claims Agreement, Article 12, Section 12.4.3.

<sup>36</sup> See NIRB Project Certificate No.: 003, Part 4.0 Project Specific Terms and Conditions, Nos. 5-7.

<sup>37</sup> *Ibid*, Nos. 9-12.

<sup>38</sup> *Ibid*, Nos. 13-17.

<sup>39</sup> *Ibid*, No. 18.

<sup>40</sup> *Ibid*, No. 31.

<sup>41</sup> See for example the water quality commitments contained in Appendix A: List of Commitments, contained in NIRB Project Certificate No.: 003.





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Licence meets the requirements of the Project Certificate in relation to matters that are within the jurisdiction of the NWB.

### Inuit Water Rights

In the Kitikmeot Inuit Association's final written submission,<sup>42</sup> the KIA confirmed that the requirements of water user compensation pursuant to s. 63(1) of the NWNSRTA had been satisfied with respect to the Application.

### The Nunavut Waters Regulations

At the time that the Application was filed with the Board, the NWB's jurisdiction to charge water user fees and to require a Type "A" Water Licence for this activity was set out in accordance with certain provisions of the *Northwest Territories Waters Regulations*.<sup>43</sup> These *Regulations* were identified as applicable in Nunavut (in the absence of Nunavut's own regulations) under the "Application of Regulations" made under paragraph 33(1) (m) or (n) of the *Northwest Territories Waters Act* in Nunavut Order, S.O.R./2002-253. Prior to the Public Hearing, however, the *Northwest Territories Waters Regulations* were replaced by the new *Nunavut Waters Regulations* (NWR),<sup>44</sup> which came into force on April 18, 2013. Consequently, as the renewed and amended Type "A" Water Licence had not yet been issued issues such as water user fee calculations are to be governed by the provisions of the NWR, as discussed in more detail in the appropriate section of the decision.

### Fisheries Act and Regulations

Under s. 73 of the NWNSRTA, any condition of a water licence relating to the deposit of waste into waters where regulations pursuant to s. 36(5) of the *Fisheries Act* apply shall be at least as stringent as the conditions prescribed by those regulations. Further, the Board emphasizes that the licences issued by the NWB do not authorize habitat alteration disruption or destruction pursuant to s. 35 of the *Fisheries Act*,<sup>45</sup> nor does a water licence authorize the deposit of

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<sup>42</sup> Letter to Phyllis Beaulieu, Manager of Licensing, NWB from John Roesch, P.Eng., Senior Hope Bay Project Officer, KIA, dated June 24, 2013, Re: KIA Submission on the Nunavut Water Board on Water Licence No.2AM-DOH0713; Application for the Amendment and Renewal of Type "A" Water Licence.

<sup>43</sup> S.O.R./93-303.

<sup>44</sup> S.O.R./2013-69.

<sup>45</sup> See s. 35(1) of the *Fisheries Act* which states:

No person shall carry on any work, undertaking or activity that results in the harmful alteration, disruption or destruction, of fish habitat.



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deleterious substances into waters frequented by fish as set out in s. 36 of the *Fisheries Act*.<sup>46</sup> The Applicant is advised that separate regulations<sup>47</sup> and DFO authorizations may govern deposits of deleterious substances.

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(Subject only to the exceptions in s. 35(2), which include carrying on the work, undertaking or activity in accordance with prescribed conditions, conditions established by the Minister, in accordance with an authorization or permission granted under the Act or in accordance with regulations).

<sup>46</sup> See s. 36 of the *Fisheries Act* which states:

36. (1) No one shall...

(3) Subject to subsection (4), no person shall deposit or permit the deposit of a deleterious substance of any type in water frequented by fish or in any place under any conditions where the deleterious substance or any other deleterious substance that results from the deposit of the deleterious substance may enter any such water.

(4) No person contravenes subsection (3) by depositing or permitting the deposit in any water or place of  
(a) waste or pollutant of a type, in a quantity and under conditions authorized by regulations applicable to that water or place made by the Governor in Council under any Act other than this Act;

(b) a deleterious substance of a class and under conditions -- which may include conditions with respect to quantity or concentration -- authorized under regulations made under (5) applicable to that water or place or to any work or undertaking or class of works or undertakings; or

(c) a deleterious substance the deposit of which is authorized by regulations made under subsection (5.2) and that is deposited in accordance with those regulations.

<sup>47</sup> Regulations made under s. 36(5) or (5.2) to authorize the deposit of deleterious substances in prescribed classes, amounts, circumstances, etc. such as the *Metal Mining Effluent Regulations*, SOR/2002-222.



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### **SECTION VI: DECISION TO ISSUE**

Following the close of the written Public Hearing held in respect of this Application and for reasons elaborated further below, the Board has decided to issue Water Licence 2AM-DOH1323 (Licence) subject to the conditions set out therein.<sup>48</sup> The Licence contains terms and conditions necessary to protect the environment, conserve the water resources, and provide appropriate safeguards in respect of the Licensee's use of waters and deposit of waste. The Licence also parallels the recommendations and suggestions made by the Nunavut Impact Review Board in 2006 in their Environment Assessment Report, which was subsequently approved by the Minister.<sup>49</sup>

#### **Conditions for Issuance of a Licence**

Section 57 of NWNSRTA provides several key legislative requirements that must be satisfied before the Board may issue a licence.<sup>50</sup> On the issues of water use and waste produced by the undertaking the Applicant has satisfied the Board that in combination with mitigation measures proposed by the Applicant, the continued application of the terms and conditions of the Existing Licence and some minor amendments to reflect the current phase of development of the Project, the Project can continue to meet acceptable standards for water quantity, water quality and effluent quality.

#### **Financial Responsibility of the Applicant**

As outlined under the NWNSRTA, s. 57(b), the Board considers three aspects of financial responsibility:

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<sup>48</sup> The Licence has been issued under separate cover as 2AM-DOH1323.

<sup>49</sup> See Nunavut Impact Review Board, Final Hearing Report for the Miramar Hope Bay Ltd. Doris North Gold Mine Project (Project), March 6, 2006, the letter from the Hon. J. Prentice, Minister of Indian and Northern Affairs Canada (as AANDC then was) to E. Copland, NIRB Acting Chair, July 28, 2006 accepting the NIRB's report and Project Certificate NIRB No.: 003 for the Doris North Gold Mine Project Proposal, issued September 15, 2006.

<sup>50</sup> Section 57 of the NWNSRTA states:

The Board may not issue a licence unless the applicant satisfies the Board that

- (a) any waste produced by the appurtenant undertaking will be treated and disposed of in a manner that is appropriate for the maintenance of the water quality standards and effluent standards that are prescribed by the regulations or, in the absence of such regulations, that the Board considers acceptable; and
- (b) the financial responsibility of the applicant, taking into account the applicant's past performance, is adequate for
  - (i) the completion of the appurtenant undertaking,
  - (ii) such measures as may be required in mitigation of any adverse impact, and
  - (iii) the satisfactory maintenance and restoration of the site in the event of any future closing or abandonment of that undertaking.



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- the financial ability of the Applicant to complete the appurtenant undertaking;
- the ability of the Applicant to undertake measures to adequately monitor for impacts and implement measures to mitigate any impacts; and
- the Applicant's ability to maintain and restore the site during care and maintenance, closure and abandonment.

This third aspect of financial responsibility will be specifically addressed in the section of this decision discussing reclamation security.

Section 57 also makes it clear that the NWB's assessment of the Applicant's financial responsibility is a contextual analysis that considers not only the undertaking which is the subject matter of the Licence, but also the Applicant, with particular regard to the Applicant's past performance. The Board notes that in this case, the Applicant was not the Licensee under the Existing Licence until June, 2013, and as such the past operating history is in relation to the previous Licensee, Hope Bay Mining Limited (HBML). However, given that HBML will continue to be a significant shareholder in TMAC,<sup>51</sup> the performance of HBML under the Existing Licence continues to be a consideration in the NWB's assessment of the Applicant's financial responsibility. With respect to the prior Licensee, HBML, the Board had no evidence of any outstanding issues of non-compliance with the Existing Licence.

In June 2013, as part of the Board's consideration of HBML and TMAC's assignment request for the Existing Licence, the Board reviewed the ownership structure and financial details of the assignment. This review demonstrated TMAC's financial ability to assume HBML's outstanding liabilities and responsibilities under the Existing Licence. During that review, the Board also received confirmation from HBML and AANDC that the security posted under the Existing Licence remained in good standing.<sup>52</sup> Further, HBML indicated that they would continue to maintain the security required under the Type "A" Water Licence until such time as TMAC posts equivalent security with the Minister.

On this basis, in granting the assignment of the Existing Licence in June, the Board was confident that TMAC has the financial resources required to hold the Type "A" Water Licence as required under the NWNSRTA. Having received no new evidence to the contrary, the Board

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<sup>51</sup> Cover letter Attention to Phyllis Beaulieu, Manager of Licensing , NWB, from Chris Hanks, HBML, and illegible signature, from TMAC, dated February 6, 2013, Re: Nunavut Water Board Approval of Assignment of Water Licence 2AM-DOH0713, 2BB-BOS1217 and BE-HOP1222 from Hope Bay Mining Ltd. to TMAC Resources Inc.

<sup>52</sup> See the documentation associated with the Assignment of Licence 2AM-DOH0713, available from the Board's ftp server at: <ftp://nunavutwaterboard.org/1%20PRUC/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-DOH0713%20HBML/1%20APPLICATION/2013%20Assignment/>.



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continues to consider TMAC to have the financial resources required to hold the renewed and amended Type “A” Water Licence.

### **Compensation of Existing or Other Users**

The NWNSRTA requires that the Board be satisfied that compensation of existing or other users has been or will be paid.<sup>53</sup> Notice of the Application and the invitation to parties with water user compensation issues to advise the Board regarding such issues was given in May 2013<sup>54</sup> and the NWB confirms that no representations regarding compensation were made to the Board.

### **Issuance of a Licence**

As stated above and pursuant to s. 42(1) of the NWNSRTA, the Board has decided to issue Water Licence 2AM-DOH1323 subject to the terms and conditions set out therein and explanations provided herein. In issuing the licence, the Board is satisfied that the Application contains the required information and is in the proper form having regard to the requirements of the NWNSRTA<sup>55</sup> and associated regulations.<sup>56</sup>

### **Assumptions**

When faced with choices regarding monitoring requirements such as standards or parameters to be imposed under the Licence, the Board has opted to maintain stringent monitoring requirements in an effort to ensure that the Applicant meets their on-going environmental protection obligations.

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<sup>53</sup> See ss. 58-60 of the NWNSRTA.

<sup>54</sup> Notice of the Application in accordance with s. 55 of the NWNSRTA was issued by the Board on May 6, 2013.

<sup>55</sup> See s. 48 of the NWNSRTA.

<sup>56</sup> *Nunavut Waters Regulations*, SOR/2013-69, April 18, 2013.



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### **Applications in Relation to the Licences**

Overall, the Board is satisfied that the requirements of s. 48 of the NWNSRTA have been met. The Applicant filed an Application which complied with the Board's Rules, accompanied by the fees required by regulation including the application fee and water use fees.<sup>57</sup> In addition, the Applicant has also provided the necessary information to evaluate the qualitative and quantitative effect of the use of water or the deposit of waste into water.

### **Application to Amend or Application for Future Modifications**

In relation to future applications to amend or modify the Project, the Board reminds TMAC that it must comply with all requirements of the NLCA<sup>58</sup> and NWNSRTA<sup>59</sup> where applicable.

### **Assignment of a Licence**

As TMAC is aware, having recently completed the assignment of the Existing Licence from HBML, a water licence is only assignable if the requirements of s. 44 of the NWNSRTA have been met. This section states:

“A sale or other disposition by a licensee of any right, title or interest in an appurtenant undertaking constitutes, subject to the authorization of the Board, an assignment of the licence to the person to whom the sale or other disposition is made.”

All necessary forms for filing an application for assignment can be obtained from the NWB Licensing Department.

### **Cancellation or Expiry of the Licence**

The Board notes that s. 46 of the NWNSRTA states: “[t]he expiry or cancellation of a licence does not relieve the holder from any obligations imposed by the licence.”

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<sup>57</sup> In accordance with section 7 of the *Northwest Territories Waters Regulations*, S.O.R./93-303 that, pursuant to the Application of Regulations made under paragraph 33(1) (m) or (n) of the *Northwest Territories Waters Act* in Nunavut Order, S.O.R./2002-253 applied in Nunavut at the time of the original application, a fee of \$30.00 was provided with the application. Water use fees have been received for the period ending September 19, 2013.

<sup>58</sup> See Article 12, Clause 12.4.3 (b) of the NLCA.

<sup>59</sup> See s. 43 of the NWNSRTA.



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In addition the Board advises TMAC that based on the Board's authority under s. 43(1)(c)(iii) of the NWNSRTA, the Board may, on application by a licensee, or on its own motion, cancel a licence when the Board considers the cancellation to be in the public interest.

### **Term of Licence**

In accordance with s. 45 of the NWNSRTA, the term of a licence or any renewal shall not exceed twenty-five (25) years.

When the Board issued the Existing Licence in 2007, reflecting that the Applicant had proposed a relatively short operating phase for the mine (2 years), the Applicant had applied for an eight (8) year term for the Licence. However, at that time, the Kitikmeot Inuit Association and Nunavut Tunngavik Inc. expressed concern that an eight (8) year term was too long because the Board would not have had an opportunity to review the water quality monitoring data and overall success of the Licensee's water and waste management plans at the site prior to the project entering the phase of post-closure monitoring. Balancing the Licensee's need for certainty throughout the Project with the need for maintaining on-going accountability and being able to consider monitoring data and the effectiveness of mitigation plans before the closure and abandonment of the undertaking, the Board issued the Existing Licence for a term of six years.<sup>60</sup>

In the current Application, the Applicant, reflecting that the Project is currently in care and maintenance, has asked for a 10 year term, as it is unclear when the Project would move out of care and maintenance, when additional construction may be conducted and the time that would be necessary for the Applicant to successfully transition the Project from care and maintenance into ore processing. As outlined in the summaries of the submissions of the intervening parties, both AANDC and the KIA indicated that, reflecting the current circumstances and more particularly uncertainty in terms of the timing of the Applicant being able to transition from care and maintenance to ore processing, a term of 10 years is reasonable.

The Board has determined, after due consideration of the positions of the parties and the factors outlined above, that the Licence should be renewed for a term of 10 years.

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<sup>60</sup> See the Board's discussion of the Term of the Licence at pp. 14-15, Nunavut Water Board, Reasons for Decision for 2AM-DOH0713, Applicant: Miramar Hope Bay Ltd., issued September 19, 2007.





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**SECTION VII: WATER LICENCE 2AM-DOH1323 TERMS AND CONDITIONS**

The Licence does not take effect until approval of the Minister is given or deemed to have been given pursuant to s. 56 of the NWNSTRA.<sup>61</sup> As indicated in Section VI, the Panel, by way of Motion #2013-12-DN-05 has decided to issue Water Licence No. 2AM-DOH1323, subject to the conditions set out therein. To provide context and clarity, the Board has provided the discussion and comments about specific terms and conditions that follow. The Board has not, however, provided specific comments for those licence terms and conditions that are clear in their wording and intent on the face of the Licence.

**Part A: Scope, Definitions and Enforcement**

The Project for which this Licence is issued is classified as a Mining Undertaking in accordance with Schedule 1, Item 2 of the *Nunavut Waters Regulations*.<sup>62</sup> The scope of the Licence includes the following activities and/or facilities that involve water use and/or impact the water and/or the deposit of waste:

Scope

The scope of the Type “A” Water Licence is proposed to remain essentially the same as the Existing Licence which is:

- The use of water from Doris Lake for mining and milling processing, associated activities and domestic purposes;
- The use of Waters from Windy Lake for domestic purposes at the Doris Camp;
- The quarrying of materials from specified locations;
- The development and operation of site facilities;
- The construction of access and site roads, airstrip and airstrip bypass road, water crossings, and lay down areas;
- The construction of a temporary waste rock storage pad;
- The construction and operation of a Wastewater Treatment Plant (WWTP);

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<sup>61</sup> Section 56 of the NWNSTRA 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.

<sup>62</sup> Formerly classified as a “Mining and Milling Undertaking” under Schedule 1 of the *Northwest Territories Waters Regulations*, S.O.R./93-303 and Application of Regulations made under paragraph 33(1) (m) or (n) of the *Northwest Territories Waters Act* in Nunavut Order, S.O.R./2002-253.





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- The construction and operation of a Landfill and Landfarm;
- The construction and operation of a sedimentation pond and pollution control pond;
- The management and disposal of wastes associated with the Wastewater Treatment Plant (WWTF), sedimentation and pollution control ponds, Land fill and Landfarm, and other wastes as described in the application;
- The handling and storage of petroleum products and hazardous materials including explosives, cyanide and other reagents;
- The construction of dams, spillway, and shoreline erosion control needed for the operation of Tail Lake as a Tailings Impoundment Area;
- The extraction of portal development rock, waste rock and ore from underground via decline;
- A mining rate of 720 tonnes per day of ore
- A mill with a design milling throughput of 800 tonnes per day ore;
- The deposition of tailings into the Tailings Impoundment Area (Tail Lake);
- The disposal of waste rock, including potentially acid generating rock, and cyanide leach residue within the underground workings;
- The use of Waste Rock from underground for construction as approved by the Board in accordance with conditions of Part G;
- The Diversion of site runoff water to water management facilities, including the Tailing Impoundment;
- The controlled discharge of effluent from the Tailings Impoundment Area to Doris Creek; and
- The progressive reclamation of on-site facilities and infrastructure.

Enforcement and Compliance

For the purpose of ensuring compliance with the Licence, an Inspector designated by the Minister may inspect or examine works, waters or waste and exercise other powers according to the NWNSRTA.<sup>63</sup> The NWNSRTA includes provisions authorizing the Board to require the Licensee to furnish and maintain security and prescribing serious penalties for breach of the Licence.<sup>64</sup> Investigations or inspections to support enforcement and compliance are carried out by persons designated and empowered by the Minister.<sup>65</sup>

The Applicant should also note that the Licence states that “[c]ompliance with the terms and conditions of this Licence does not absolve the Licensee from responsibility for compliance with all applicable legislation, guidelines and directives.”

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<sup>63</sup> Sections 85-94 of the NWNSRTA.

<sup>64</sup> Section 90 of the NWNSRTA.

<sup>65</sup> Section 85-88 of the NWNSRTA.



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There were no non-compliance issues identified during the review phase of the application process and no issues were brought forward by intervening parties at the Public Hearing.

### **Part B: General Conditions**

#### Water Use Fees

Subject to the applicable regulations, the Licensee is required to remit fees for the right to the use of waters under this Licence. Fees for the right to the use of waters must be calculated and paid on an annual basis in advance of the date on which this Licence was issued and in accordance with s. 12 of the *Nunavut Waters Regulations*. It should be noted that in contrast to the previous water user fees requirements under the *Northwest Territories Waters Regulations* (in place in Nunavut until April 18, 2013) and applicable to the Existing Licence, s. 12(6) of the new *Regulations* states that “no licence fees are payable for the right to the use of waters on, in or flowing through Inuit-owned Lands”. As a result, the fees being referred to in this section are only for waters on, in or flowing through Crown Lands, which must be submitted to the NWB’s Manager of Licensing and made payable to the Receiver General for Canada. The Licensee is responsible to conduct the appropriate water use fee calculations for all waters in, on or under **Crown lands** that will be used by the Licensee in the upcoming year and then remit the required water use fees in advance.

#### Reports and Plans Filed with the Board

The Applicant has filed the following management plans with the Board under the Application for the Project:

- Emergency Response Plan, Hope Bay Mining Ltd., Care & Maintenance, October 2012;
- Hope Bay Mining Ltd., Spill Contingency Plan, HB-ER-ENV-MP-001, October 2012 (Rev 5); and
- Hope Bay Mining Ltd., Waste Water Treatment Management Plan, HB-WM-OPS-MP-004, October 2012 (Rev 3).

Unless management plans are accepted or approved by the Board in writing, the plan cannot be considered as meeting the relevant requirements in the Licence. In addition, the Board may alter or modify a Plan, if necessary, to achieve the legislative objectives and will notify the Licensee in writing of acceptance, rejection, or alteration of any Plan. The Plan must then be carried out in a manner and timeframe consistent with the Board’s direction. Every Plan to be carried out pursuant to the terms and conditions of the Licence shall become a part of the Licence, and any



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additional terms and conditions imposed upon approval of a Plan by the Board also become part of the Licence.

The following plans have been concurrently approved by the Board with the approval of the licence; however, the Licensee may be required to update or to make corresponding changes to the Plans to reflect the appropriate terms and conditions in the Licence and status of the Project:

- Doris North Project Interim Water Management Plan, Hope Bay Mining Ltd., Revision 5, HB-WM-OPS-MP-001, December 2012;
- Hope Bay Mining Ltd., Wastewater Treatment Management Plan, HB-WM-OPS-MP-004, October 2012 (Rev 3);
- Hope Bay Mining LTD, Incinerator Management Plan, March 2012 (Rev 1.1);
- Hope Bay Mining LTD, Hazardous Waste management Plan, (Rev 1.1), March 2012;
- Hope Bay Project Doris North Waste Rock and Ore Management Plan, dated December 2012;
- Hope Bay Mining Ltd., Spill Contingency Plan, HB-ER-ENV-MP-001, October 2012 (Rev 5); and
- Doris North Closure and Reclamation Plan, Hope Bay Mining Ltd., 1CH008.065, August 2012.

The following plan has been approved by an analyst for use by the Licensee:

- Hope Bay Mining Ltd., Quality Assurance and Quality Control Plan, HB-QA-ENV-MP-001, November 2012 (Rev 7.1).

The Applicant has filed a two other management plans with the Board under the Application for the Project that serve as a guideline to operations and provide additional assurance to the Board of the Licensee's obligations for environmental protection beyond the mandate of the Board:

- Emergency Response Plan, Hope Bay Mining Ltd., Care & Maintenance, October 2012;
- Hope Bay Mining Ltd., Non- Hazardous Waste management Plan, March 2012 ( Rev 1.1);

Plans that have been specifically updated to reflect Care and Maintenance, may have to be updated if going out of care and maintenance and the Project will be continuing on to Operations

The Licensee will be required to update the following plans and submit to the Board for review, acceptance or approval in accordance with the relevant terms and conditions in the Licence prior to Operations:



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- Tailings management Plan;
- Doris North Gold Mine Project: Aquatic Effects Monitoring Plan (AEMP);
- Landfill Management Plan;
- Landfarm Management Plan;
- Interim Closure and Reclamation Plan; and
- Final Water Management plan.

### **Part C: Conditions Applying to Security**

In the Public Hearing and original Board decision associated with the Existing Licence, the conditions applying to security were the subject of considerable debate, discussion and deliberation.<sup>66</sup> However, in this Application, there was agreement by the parties regarding the amendment to this section of the Licence required to reflect the updated liability assessment and no other substantive issues were identified.

#### Financial Responsibility of the Applicant and Requirement of Security

The NWNSRTA allows the Board to require the Licensee to furnish and maintain security with the Minister in a form determined by the regulations or satisfactory to the Minister.<sup>67</sup> Further, as referred to in the section discussing the financial responsibility of the Applicant, the Board may not issue a Licence unless the Board is satisfied regarding the financial responsibility of the Applicant, including reviewing any costs associated with the closing or abandonment of the undertaking.<sup>68</sup>

#### The Board's Jurisdiction over Land and Water Security

As stated in the Board's Reasons for Decision associated with the Existing Licence, the Board's jurisdiction over land and water security is broad and extends to determining the total amount of security required for the reclamation of the licensed undertaking:

“After careful consideration, the Board accepts the submissions of both KIA [Kitikmeot Inuit Association] and MHL on the matter of the Board's jurisdiction pursuant to section 76(1) of the NWNSRTA. In particular, in the Board's mind, the language of subsections 76(1) and

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<sup>66</sup> Nunavut Water Board, Reasons for Decision for 2AM-DOH0713, Applicant: Miramar Hope Bay Ltd., issued September 19, 2007 at pp. 16-27.

<sup>67</sup> Subsection 76(1) of the NWNSRTA states:

The Board may require an applicant, a licensee or a prospective assignee to furnish and maintain security with the Minister in the form, of the nature, subject to such terms and conditions and in an amount prescribed by, or determined in accordance with, the regulations or that is satisfactory to the Minister.

<sup>68</sup> See footnote 50 for the full text of s. 57(b) of the NWNSRTA.



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70(1)(d), as well as the wording of the section 12 of the NWT Water Regulations, including the use of the words “appurtenant undertaking” provide the Board with jurisdiction to determine the total amount of security – water and land-related – for the Project. Furthermore, while the Board is not bound by its previous decisions, the Board has reviewed and re-affirms its reasons in its 2001 Boston Renewal Decision, particularly those reasons cited above by MHBL. Most importantly, the Board agrees with MHBL that this decision is consistent with the Federal Court’s interpretation of section 76(1) of the NWNSRTA in the CanZinco decision.”<sup>69</sup>

As a result of its statutory authority and obligations, the Board takes a holistic and practical approach to the assessment of the security required to be held under Type “A” Water Licences.<sup>70</sup>

### Form of Security

Pursuant to s. 76(1) of the NWNSRTA and s. 10(3) of the *Nunavut Waters Regulations* S.O.R./2013-69:

10(3) Security must be in the form of

- (a) a promissory note guaranteed by a bank listed in Schedule I or II to the *Bank Act* and made payable to the Receiver General;
- (b) a certified cheque drawn on a bank listed in Schedule I or II to the *Bank Act* and made payable to the Receiver General;
- (c) a performance bond approved by the Treasury Board for the purposes of paragraph (c) of the definition “security deposit” in section 2 of the *Government Contracts Regulations*;
- (d) an irrevocable letter of credit from a bank listed in Schedule I or II to the *Bank Act*; or
- (e) a cash payment.

### Amount of Security

There was agreement by all the parties that the amount of security should be updated from the amount fixed under Part C: Item 1 of the Existing Licence, \$11.714 million, to \$13.09 million to reflect the revised liability estimate provided by the Applicants.<sup>71</sup>

<sup>69</sup> Nunavut Water Board, Reasons for Decision for 2AM-DOH0713, September 19, 2007 at p. 25.

<sup>70</sup> For a more extensive discussion of the development of the Board’s jurisdiction with respect to security over time, see the Board’s recent decision applicable to the Mary River Project, Nunavut Water Board, Reasons for Decision for 2AM-MRY1325, Baffinland Iron Mines Corporation, June 12, 2013 at pp. 54-57.

<sup>71</sup> Cover letter to Phyllis Beaulieu, Manager of Licencing, NWB, from Chris Hanks, VP Environmental Affairs, HBML, dated January 14, 2013, Re: 2AM-DOH0713, 2BE-HOP122, and 2BB-BOS1217 – Updated Security Estimates.



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### Review of the Amount of Security

Under the *NWNSRTA* the Board may also include conditions of a licence where it considers this appropriate. Most specifically, s. 76(1) of the *Act* gives the Board the authority to establish terms or conditions relating to the furnishing or maintaining of security. As always the Board's authority must be exercised in light of its objects, stipulated under s. 35 of the *Act*.<sup>72</sup>

On this basis, the Board has determined that it is appropriate to maintain the requirements of the Existing Licence under Part C: Items 2 and 3 that prescribe that, within 6 months of the Licensee commencing Operations (as defined under the Licence) and again within 18 months of ore processing that updated estimates of total mine restoration liability be provided to the Board and that the Licensee will be required to post such further amounts of security as may be required by the Board to reflect the updated estimates.

In the Board's view, as the current updated mine restoration liability is based on the fact that the Project is currently in care and maintenance and that no ore processing has occurred at the site to date, it is reasonable for the Board to revisit the adequacy of security posted when the mine restoration liability is updated to reflect the change in liability associated with the transition from care and maintenance to active mining.

### **Part D: Conditions Applying to Construction and Operations**

Based on the information provided in the Application, representations made by various intervening parties, and the NWB's review, the Board has included conditions requiring the Proponent to submit to the Board for review:

- At least two (2) months prior to restarting Project construction, issued for construction drawings (IFC), stamped and signed by qualified professional, for all relevant facilities/infrastructure designed to contain, withhold, divert or retain waters;
- An Annual Construction Monitoring Report, no later than March 31 in the year following the calendar year being reported. This Annual Construction Monitoring Report shall include an updated list of already constructed facilities or infrastructure related to this Water Licence;

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<sup>72</sup> Section 35 states:

The objects of the Board are to provide for the conservation and utilization of waters in Nunavut, except in a national park, in a manner that will provide the optimum benefit from those waters or the residents of Nunavut in particular and Canadians in general.



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- Conducting Quarry Rock Construction Monitoring and Management in accordance with the approved Waste Rock and Ore Management Plan;
- Subsequent to the construction phase of the project, within ninety (90) days of the completion of each structure designed to contain, withhold, divert or retain waters, a construction summary report including as-built drawings and design as well as documentation of field decisions that differed from the original plans;
- Upon the completion of each facility designed to contain, withhold, divert or retain waters, a Construction Summary Report.

In addition to the above, the Proponent is required to carry out a number of monitoring programs with respect to construction including a Quarry Rock Seepage Monitoring and Management Program.

The Board has included conditions requiring the Proponent to undertake geotechnical inspections of facilities/infrastructure designed and constructed to withhold, divert or retain waters in accordance with set intervals as well as in adherence to the Canadian *Dam Association Safety Guidelines* for relevant infrastructure/facilities.

### **Part E: Conditions Applying to Water Use**

Section 11 of the NWNSRTA states “... no person shall use, or permit the use of, water in Nunavut except in accordance with the conditions of a licence.”

#### Water Use

##### ***Background***

The scope of this Licence includes the use of waters for domestic and industrial purposes. Industrial water use is categorized as water required for purposes, such as mining, milling, manufacturing concrete, dust suppression, drilling, etc. Domestic water uses include water that will generally undergo treatment at potable water treatment facilities and be used for drinking purposes and other camp-related uses.

The authorized freshwater demand for the project has been set at a maximum of 480,000 cubic metres per year (unchanged from the Existing Licence). The Existing Licence authorized the Licensee obtaining fresh water for domestic camp use, mining and milling and associated uses from Doris Lake. However, based on the submissions of the Applicant and no objections from interveners, the Board has amended the Existing Licence to also authorize the Licensee to





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withdraw domestic water from Windy Lake at the Windy Lake Freshwater Intake to a maximum of sixty-three (63) cubic metres per day (22,995 cubic metres annually), the amount previously authorized for domestic use at the Windy and Doris camps within Licence No. 2BE-HOP1222. This use of waters is to be included in the maximum total authorized use of waters for the Project of 480,000 cubic metres.

Based on the Board's experience with the Existing Licence, the Board is satisfied that the terms and conditions applicable to water use in the Existing Licence continue to be appropriate and adequate protection for water quality and quantity over the course of the amended and renewed Licence and has brought forward these terms and conditions into Licence 2AM-DOH1323. Specifically, the Board has imposed in the Licence daily and yearly limits on water requirements for the Project that are meant to protect sources from the effects of drawdown and that set effluent criteria for discharges in order to prevent harm to the receiving freshwater environment.

### **Part F: Conditions Applying to Water Management**

Under Part F, Item 1, at least six months prior to the Licensee commencing Operations (as defined in the Licence), the Licensee must provide, for Board approval, a revised Water Management Plan that includes requirements and updates to the Licensee's requirements to complete water quality modeling and monitoring under the Licence. Part F, Item 2 requires regular inspections of all water management structures during periods of flow, with records to be maintained for review at the request of an Inspector.

### **Part G: Conditions Applying to Waste Disposal and Waste Management**

From an enforcement and compliance perspective the Board has endeavoured to prepare the attached renewed and amended Type "A" Water Licence in a manner that fairly reflects the phase of development of the Project, the Board's previously approved Licence amendments, the Applicant's amendment requests, the issues presented to the Board during the licensing process, including the final submissions filed with the Board for the written Public Hearing, and the Board's mandate and jurisdiction. The Board has attempted to bring forward clear and effective discharge parameters and other limits from the Existing Licence into this Licence and consolidate previous Board amendments to the Licence.

#### **Waste Disposal**

Various quantities and types of waste (solid and in effluent streams) will be generated during the construction, operation and closure phases of the Project. To assist in effectively managing the





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wastes generated, the Board has included terms and conditions governing the following waste management facilities in the Licence:

- Sewage and wastewater treatment plant;
- Dioxins and furans, mercury emissions;
- On site incinerator;
- Solid wastes;
- Landfill site and non-hazardous solid waste;
- Hazardous waste;
- Landfarm;
- Waste rock;
- Potential acid generating rock (PAGR);
- Sedimentation and pollution control ponds;
- Tailing impoundment area;
- Sumps; and
- Cyanide leach residue.

### Waste Effluent Streams

In general, the Board has included conditions in the Licence to ensure that the main types of waste and/or effluent generated by the Project do not negatively impact the receiving freshwater environment. The following lists the wastes, facilities and/or activities that are of importance to the NWB's mandate:

- Tailings Impoundment Area;
- Wastewater Treatment Plant;
- Landfill;
- Landfarm;
- Fuel Storage and Containment Facilities;
- Sedimentation Pond;
- Pollution Control Pond; and
- Reagent and Cyanide Storage Facility sumps.

Facilities that will produce a waste effluent stream include waste rock and ore stockpiles, surface runoff contact water, Landfills and Landfarms, fuel storage facilities. Appropriate effluent quality criteria have been included within the Licence to regulate the types of discharge and the quality of effluent that may be released from these facilities.



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### ***Wastewater Treatment***

Wastewater treatment includes discharges from the Project camp located at Doris Lake. This wastewater is treated using the Wastewater Treatment Plant covered under Part G of the Licence.

### ***Tailings Impoundment Area (TIA)***

The licence has included a condition for the submission and approval of a revised Tailings Management Plan, originally submitted with the initial application and then provided in 2007 as a revision under Part G, Item 25 of the Licence. This Plan is to reflect recent new developments in the mine plan and site infrastructure and proposed operations. The Plan is to be submitted six (6) months prior to the commissioning of Operations and ore production, resulting in deposition of mill tailings within the Tailings Impoundment Area (TIA).

With respect to the Effluent discharge from the TIA, the Board has adopted terms and conditions in the Licence that capture discharge parameters consistent with the existing MMER.

### **Solid Waste Management**

The activities at the site generate a variety of waste types and quantities that would necessitate the implementation of adequate and effective waste management measures and strategies to ensure that negative potential environmental impacts are prevented or minimized. In keeping with this objective, the Licensee is required to submit various management plans detailing how TMAC intends to manage the waste generated by the Project as well as timelines for the submission of outstanding management plans. Under the appropriate sections of the Licence, the NWB has approved relevant waste management plans previously provided by the Licensee as well as including requirements for the submission of updated and additional plans where necessary.



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### **Part H: Conditions Applying to Modifications**

As discussed under the Regulatory History section of this Decision, pursuant to Article 12 and Clause 12.4.3<sup>73</sup> of the NLCA a proposed modification submitted under this Licence may require a screening determination by the NIRB. It is the responsibility of the Licensee to notify and consult with NIRB to ensure Article 12 requirements are met prior to submission of a modification request to the NWB under the Licence.

Further, the Licensee is required to obtain permission from the Board for any modification being contemplated. Without written consent from the Board, the Licensee is not allowed to carry out modifications. All modifications must be consistent with the terms of the amended and renewed Licence, otherwise they cannot be carried out as “modifications”.

### **Part I: Conditions Applying to Contingency Planning**

The development and implementation of measures to respond to spills and other emergencies are fundamental to ensuring that any potential undesired effects that certain Project activities might have on the receiving environment are prevented and/or minimized. Accordingly, the Applicant has submitted an updated Emergency Response Plan (ERP) and a Spill Contingency Plan (SCP) as part of the licensing process in October 2012. These Plans identify potential emergencies that could arise while executing the Project, and a procedural framework for responding to those emergencies.

In comments provided by the KIA during the review of the Application, it was identified that future revisions should include updated contact information for the new Licensee (addressed during the assignment application when this information was provided) and identified that several minor changes should be included in the next update of the Plans.

### **Part J: Conditions Applying to General and Aquatic Effects Monitoring**

As previously noted, s. 73 of the NWNSRTA requires the Board to set conditions at least as stringent as conditions prescribed by regulation pursuant to ss. 36(5) and (5.2) of the *Fisheries*

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<sup>73</sup> Article 12, Clause 12.4.3 of the NLCA states:

Any application for a component or activity of a project proposal that has been permitted to proceed in accordance with these provisions shall be exempt from the requirements for screening by NIRB unless

- (a) Such component or activity was not part of the original proposal [i.e. not part of the original scope of the project]; or
- (b) Its inclusion would significantly modify the project.



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Act.<sup>74</sup> Furthermore, for the purpose of ensuring compliance with the licence or regulations, an Inspector designated by the Minister may inspect or examine works, waters or waste and exercise other powers according to the NWNSRTA.<sup>75</sup> For the purpose of monitoring, the Board may include conditions in the licence regarding monitoring programs to be undertaken.<sup>76</sup>

The inclusion of monitoring requirements in the Licence is crucial from the perspective of ensuring that the facilities operating under the Licence are doing so in accordance with design specifications and that any discharge being generated meets acceptable criteria in the Licence.

TMAC proposed changes related to the frequency of water quality monitoring at stations TL-1 (at the Reclaim Pump Barge), TL-2 and TL-3 (Doris Outflow Creek) as follows:

- Reducing the duration of sampling at TL-1 from a two (2) week-long campaign *prior discharge* to a one (1) week-long campaign. A campaign of (3) sample is sufficient to confirm that water quality meets Licence requirements for discharge and at the same time better facilitate the discharge of TIA water during peak flows of spring freshet. No sampling at Doris Creek is necessary (i.e. TL-2 and TL-3) as there is 15 years of historical data already in existence.
- Reducing the duration of sampling at TL-1, TL-2 and TL-3 from every second day for two (2) weeks to twice weekly sampling for two (2) weeks, *after the commencement of discharge*, and once per week thereafter at TL-1, TL-2 and TL-3. This is an appropriate monitoring frequency given the anticipated water volumes and quality from the TIA.
- The sampling frequency will be increased at TL-1, TL-2 and TL-3 in the event of a deviation of any parameter at TL-3 of more than 20%, and the concentration of this parameter is within 25% of the compliance level listed in Part G, item 30 of the Licence. This change will eliminate those instances where sampling is increased when there isn't a risk of water quality non-compliance.

TMAC also proposed changes to conditions applying to the Care and Maintenance phase as follows:

- The Proponent shall regularly inform the NWB and interested parties on revisions to management and monitoring plans. This will be done, at a minimum, within 3 months of

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<sup>74</sup> Section 73 of the NWNSRTA states:

Where the Board issues a licence in respect of any waters to which regulations made under subsection 36(5) of the *Fisheries Act* apply, any conditions in the licence relating to the deposit of waste in those waters shall be at least as stringent as the conditions prescribed by those regulations.

<sup>75</sup> See ss. 85-94 of the NWNSRTA.

<sup>76</sup> See s. 70(1)(c) of the NWNSRTA.



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placing the Project in Care and Maintenance or bringing the Project out of same, and annually thereafter with annual report submissions.

- Contingent on weather conditions, the Proponent will perform their Care and Maintenance monitoring program, namely monitoring all water and hazardous material containment areas on a monthly basis, when water is not being managed on site. Monthly monitoring reports will continue to be provided as they document the Project's status and potential environmental liabilities.
- The Proponent shall annually update the Project's water balance and water quality model during any Care and Maintenance phase. Depending on the results presented in annual data summary reports, this model will be recalibrated in accordance with Part G, Item 31 of the Licence.

The monitoring program within the Licence under Part J and accompanying Schedule, have been revised accordingly based on the evidence presented by the Applicant and intervening parties. These changes or reduction in sampling requirements are only for the discharge from the Tailings Impoundment Area (TIA) and to be affective during initial Care and Maintenance, prior to any milling of ore and deposition of tailings within the TIA. Upon initial use of the TIA for deposition of tailings, the frequency is to return to that originally scheduled.

In addition to the reduced frequency for water quality monitoring, a request was included to reduce the frequency of toxicity testing. This request is reflected in Table 2 of Schedule J, where acute lethality testing is required once prior to discharge at Station TL-1 and once approximately midway through discharge at Station TL-4. This is reduced from monthly requirements that will be in effect during Operations.

A number of changes were made to the Thermal monitoring (Thermistors) and the frequency of sampling events. A reduced frequency of collecting thermal monitoring data during periods of Care and Maintenance is justified. The Proponent's position that sufficient thermal data has been acquired to permit the collection of thermistor data from most project infrastructure on an annual basis is adequate (it is noted that continuous data will be collected from the Tail Lake TIA's North Dam thermistor data loggers). In addition, the Proponent confirmed (June 18, 2013 TM & PHC) that the Pollution Control Pond and Sedimentation Pond thermistors will be monitored at least once a month when water is being actively managed on-site. Annual thermal data will be collected as per Table 3 in Schedule J, during care and maintenance, at a time when the active layer is the thickest, end of summer/fall.



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### **Part K: Conditions Applying to Abandonment, Reclamation and Closure**

The Board requires that all Type “A” water licence applicants prepare an Interim and eventually a Final Closure and Reclamation Plan in accordance with the *Mine Site Reclamation Guidelines for the Northwest Territories, 2007*<sup>77</sup> (Guidelines) and consistent with the *Mine Site Reclamation Policy for Nunavut, 2002* (Policy).<sup>78</sup> Details regarding the Board’s general approach to integrating the applicable policy, principles and implementation considerations into the abandonment, reclamation and closure terms and conditions in Type “A” Water Licences are set out in the Board’s recent Mary River Decision.<sup>79</sup>

Reflecting the Board’s general approach to reclamation planning, the Licence recognizes three (3) stages in the development of a Closure and Reclamation Plan (CRP):

- the preparation of a Preliminary Closure and Reclamation Plan (typically prepared as part of the environmental assessment of the project);
- the development of one or more Interim Closure and Reclamation Plans through the operating life of the mine (builds on the Preliminary CRP and is updated to reflect significant changes to the mine plan or key milestones in terms of the mine life); and
- the preparation of a Final CRP (provided and approved before a scheduled permanent closure or as soon as is practical after an unplanned closure).

Under the Existing Licence, the Applicant had submitted, on August 23, 2012, a revised closure plan entitled “Doris North Closure and Reclamation Plan, Hope Bay Mining Ltd.” prepared by SRK Consulting (Canada) Inc., 1CH008.065, August 2012 (the Plan). The Plan was acknowledged and distribution of the plan for technical review and comment was made on September 14, 2012 with a submission deadline of October 14, 2012. Submissions were received from Aboriginal Affairs and Northern Development Canada and Environment Canada. A response to the comments received was provided by HBML on February 14, 2013, providing clarification and proposed changes to the plan upon revision. Further action with respect to approval of the plan was delayed due to the submission of the amendment renewal application and the ongoing NWB licensing process. The Plan was included with the Application information. As such, the Plan, as submitted on August 23, 2012, has been approved with the

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<sup>77</sup> Indian and Northern Affairs Canada, (Yellowknife: Indian and Northern Affairs Canada, 2007) available on-line: [http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-NWT/STAGING/texte-text/msr\\_1320177195268\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-NWT/STAGING/texte-text/msr_1320177195268_eng.pdf).

<sup>78</sup> Minister of Indian Affairs and Northern Development, (Ottawa: Minister of Public Works and Government Services Canada, 2002) available on-line: [http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/recpolnuna\\_1100100036043\\_eng.pdf](http://www.aadnc-aandc.gc.ca/DAM/DAM-INTER-HQ/STAGING/texte-text/recpolnuna_1100100036043_eng.pdf).

<sup>79</sup> Mary River Project, Nunavut Water Board, Reasons for Decision for 2AM-MRY1325, Baffinland Iron Mines Corporation, June 12, 2013 at pp. 75-78.



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issuance of the Licence. This was a requirement of Part L, Item 4 of the Existing Licence which required the submission of a revised plan for review of the Board.

Respecting the current status of the Project, conditions of the Licence require the Licensee to submit to the Board for approval, within six (6) months of the start of Operations (as defined in the Licence), an Interim Closure and Reclamation Plan prepared in accordance with the Guidelines<sup>80</sup> and Policy.<sup>81</sup> In addition, within eighteen (18) months of Operations commencing, the Licensee is required to submit to the Board for approval, a Final Mine Closure and Reclamation Plan prepared in accordance with the Guidelines<sup>82</sup> and consistent with the Policy<sup>83</sup>, the Final Plan shall incorporate revisions which reflect the pending closed status of the mine. This requirement is to reflect the proposed two (2) year mine life of the current Project, providing a plan at least six (6) months prior to closure.

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<sup>80</sup> *Mine Site Reclamation Guidelines for the Northwest Territories, 2007*, see full citation in footnote 77.

<sup>81</sup> *Mine Site Reclamation Policy for Nunavut, 2002*, see full citation in footnote 78.

<sup>82</sup> *Mine Site Reclamation Guidelines for the Northwest Territories, 2007*, see full citation in footnote 77.

<sup>83</sup> *Mine Site Reclamation Policy for Nunavut, 2002*, see full citation in footnote 78.



[illegible]



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[illegible]

## **APPENDIX B – List of Submissions and Correspondence**

### **Application:**

1. Cover letter and initial submission of application for a water licence, submitted by Hope Bay Mining Ltd. (HBML), on August 10, 2012

### **Pre-application Submissions:**

1. Cover letter to Phyllis Beaulieu, Manager of Licensing, NWB, from Chris Hanks, HBML, dated February 8, 2012. Re: 2AM-DOH0713 – Interim Water Management Plan.
2. Doris North Project Interim Water Management Plan, prepared by SRK Consulting, dated February 2012, received on February 8, 2012.
3. Hazardous Waste Management Plan March 2012 (Rev 1.1), prepared by Hope Bay Mining Ltd., received on March 21, 2012.
4. Incinerator Management Plan March 2012 (Rev 1.1), prepared by Hope Bay Mining Ltd., received on March 21, 2012.
5. Non-Hazardous Waste Management Plan March 2012 (Rev 1.1), prepared by Hope Bay Mining Ltd., received March 21, 2012.
6. Letter to Lea-Marie Bowes-Lyon, HBML, from Angelique Ruzindana, Analyst Under the Northwest Territories and Nunavut Waters Act, Aboriginal Affairs and Northern Development Canada, dated July 31, 2012 Re: Quality Assurance and Quality Control (QA/QC Plan (Rev 7,0) Doris North Type A Water License No. 2AM-DOH0713 Hope Bay Type B Water License No. 2BE-HOP1722 Boston Type B water Use License NO.2BB-BOS0712 Hope Bay Mining Ltd Hope Bay Belt, West Kitikmeot, Nunavut Submitted: July 24, 2012; Reviewed: July 27, 2012.
7. Quality Assurance and Quality Control Plan 2AM-DOH0713, 2BB-BOS0712, 2BE-HOP1222 July 2012 (Rev 7.0) received August 7, 2012
8. Letter to Phyllis Beaulieu, NWB, from Angela Holzapfel, HBML, dated August 2, 2012 Re: Submission of Revised Quality Assurance/Quality Control Plan for Licences 2AM-DOH0713, 2BB-HOS0712, and 2BE-HOP1222.
9. Letter to Phyllis Beaulieu, NWB, from Lea-Marie Bowes-Lyon, HBML, dated August 23, 2012 Re: 2AM-DOH0713 – Closure Plan.
10. Doris North Closure and Reclamation Plan, prepared by SRK Consulting dated August 2012, received on August 23, 2012.
11. Email from Phyllis Beaulieu, NWB, to Doris North Distribution dated September 7, 2012, Subject: 120907 2AM-DOH0713 Amendment Renewal Acknowledgment-OMLE.
12. Letter to Chris Hanks, HBML and Distribution List, dated October 10, 2012, Re: Water Licence No. 2AM-DOH073; Application for the amendment and renewal of a Type ‘A’ Water Licence.



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13. Letter to Nunavut Water Board, Attention Phyllis Beaulieu, Manager of Licensing, from Lea-Marie Bowes-Lyon, HBML dated November 9, 2012, Renewal and Amendment of Type A Water Licence No. 2AM-DOH0713.
14. Letter to Phyllis Beaulieu, Manager of Licensing, from Paula C. Smith, Environment Canada, dated November 9, 2012 RE: 21010 2AM-DOH0713 Application for Amendment/Renewal of Type A Water Licence.
15. Letter to Ms. Phyllis Beaulieu, Manager of Licensing, from David Abernethy, Aboriginal Affairs and Northern Development Canada dated November 9, 2012, Re: Doris North Project – Hope Bay Mining Ltd. – Submission of 2012 Water Licence Renewal and Amendment Application – Completeness Review – Kitikmeot Region.
16. Email from Phyllis Beaulieu, NWB, to HBML and Distribution List, dated November 21, 2012, Subject: 121121 2AM-DOH0713 Submission of Additional Documents – Amendment Renewal Application.
17. Letter and attachments to Phyllis Beaulieu, NWB, from Lea-Marie Bowes-Lyon, HBML, dated November 27, 2012 Re: 2AM-DOH0713 Renewal and Amendment Information Requests: Hope Bay – Doris Care and Maintenance Inspection; Total fuel at Doris and Roberts Bay fuel farms as of Oct.11, 2012; table on issues and actions.
18. Letter from Phyllis Beaulieu, NWB to Chris Hanks, HBML, dated December 5, 2012, Re: Acknowledgment and Receipt of Application Fee – Renewal Water Licence – Doris North Mine Project.
19. Letter to Phyllis Beaulieu, Manager of Licensing, from John Roesch, Kitikmeot Inuit Association, dated 2013-02-13, Reference: Type A and Type B Water Licenses for Hope Bay Project.
20. Email to John Roesch, KIA, from Phyllis Beaulieu, Manager of Licensing, dated March 7, 2013, RE: Security Reclamation for Doris North Project.
21. Nunavut Water Board Notice of Application & Notice of Public Hearing, distributed to Doris North Distribution List on May 6, 2013.
22. Purchase Order 2696 from NWB to News North to Post Notices, dated May 6, 2013.
23. Letter from Phyllis Beaulieu, Manager of Licensing NWB, to Chris Hanks, HBML and Catherine Farrow, TMAC, dated May 7, 2013, Re: Water Licence No. 2AM-DOH0713; Application for the Amendment and Renewal of a Type ‘A’ Water Licence: Notice of Application.
24. Letter from Phyllis Beaulieu, Manager of Licensing, to Local Organizations, dated May 10, 2013, Request to Post Notices.
25. Letter to Phyllis Beaulieu, Manager of Licensing, from David Abernethy, AANDC, dated June 6, 2013, Re: Type ‘A’ Water Licence Number 2AM-DOH0713 – TMAC Resources Inc. – Doris North Gold Project – Kitikmeot Region – Amendment and Renewal Application.



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26. Letter to Phyllis Beaulieu, Manager of Licensing, from Jane Fitzgerald, Environment Canada, dated June 6, 2013, RE: 2AM-DOH0713 Application for the Amendment and Renewal of a Type A Water Licence: Notice of Application.
27. Letter to Phyllis Beaulieu, Manager of Licensing, from John Roesch, Kitikmeot Inuit Association, dated June 6, 2013, Re: Water Licence No.2AM-DOH0713; Application for the Amendment and Renewal of Type 'A' Water Licence: Notice of Application.
28. Letter to Nunavut Water Board, Attention: Manager of Licensing, Phyllis Beaulieu from TMAC Resources, undated, received June 13, 2013.
29. Letter to Nunavut Water Board, Attention: Manager of Licensing, Phyllis Beaulieu, from TMAC Resources, Undated, on responses to comments, received on June 13, 2013.
30. Letter to Ms. Catherine Farrow, TMAC Resources and Mr. Chris Hanks, HBML, dated June 14, 2013, Re: Notice of June 18, 2013 Teleconference Technical/Pre-Hearing Conference Regarding the Application for Amendment and Renewal of Type 'A' Water Licence No. 2AM-DOH0713.
31. Email to TMAC, HBML, NWB, AANDC and SRK, from David Abernethy, AANDC, dated June 21, 2013, Subject: Hope Bay response on questions AANCC 8 9 & 10.
32. Memo to David Hohnstein, from Chris Hanks, TMAC Resources, dated June 21, 2013, Subject: TMAC Response to AANDC comments #8, #9 and #10.
33. Letter to Phyllis Beaulieu, Manager of Licensing, from Kitikmeot Inuit Association, dated June 24, 2013, Re: KIA Submission on the Nunavut Water Board on Water Licence No.2AM-DOH0713; Application for the Amendment and Renewal of Type 'A' Water Licence, in English, Inuktitut and Innuinaqtun.
34. Memo to Doris North Distribution List dated June 24, 2013, Subject: Pre-Hearing Conference Decision Regarding the Application for Renewal and Amendment of Type "A" Water Licence 2AM-DOH0713 by TMAC Resources Inc. (previously Hope Bay Mining Limited).
35. Letter to Phyllis Beaulieu, Manager of Licensing, from David Abernethy, AANDC, dated July 2, 2013, Re: Water Licence #2AM-DOH0713 – Doris North Gold Project – TMAC Resources Inc. – Licence Amendment and Renewal Application – Kitikmeot Region, Final Written Submission.
36. Email to Doris North Distribution, from Phyllis Beaulieu, Manager of Licensing, dated July 2, 2013, Subject: 130702 2AM-DOH0713 Amendment Renewal Final Submissions Received-OMLE.
37. Letter to Nunavut Water Board, Attention: Manager of Licensing, Phyllis Beaulieu, from TMAC Resources, dated July 8, 2013, Re: Comments on Renewal Application for Hope Bay Water Licence 2AM-DOH0713.



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38. Letter from Robin Ikkutisluk, Licence Administrator Assistant, to Catherine Farrow, TMAC Resources, dated July 8, 2013, Subject: Submission of Comments on Renewal Application for Water Licence 2AM-DOH0713.
39. Memo to Doris North Distribution List, from Phyllis Beaulieu, Manager of Licensing, dated July 17, 2013, Re: Licence No. 2AM-DOH0713, TMAC Resources Inc., Renewal Amendment Application of the Type "A" Water Licence, Doris North Project: Close of the Public Hearing Record.