
March 30, 2001

TO: DISTRIBUTION LIST *and* Mackenzie Valley Environmental Impact Review Board

RE: **Tahera's Diamond Mine Application for a Water Licence and Impact Review Approval at the Jericho Site**

On March 14, 2001, Minister Nault of DIAND wrote to the Nunavut Impact Review Board (NIRB) on behalf of Fisheries and Oceans (DFO) and Natural Resources Canada (NRCan) with general instructions to proceed forward with a Part 5, Article 12 Review under the Nunavut Lands Claims Agreement (NLCA). This means that the review will fall under the authority of the NIRB, as opposed to a federal (Part 6) review. A copy of his letter is attached.

Tahera has filed applications with both the NIRB (for impact review) and NWB (for a water licence) and both boards are beginning their work. As we proceed with the Tahera review, we are mindful of the obligation of section 13.6.1 of the NLCA:

“ . . . NIRB and the NWB shall co-operate and co-ordinate their efforts in the review, screening and processing of water applications to ensure they are dealt with in a timely fashion.”

We are also mindful that interim, short term approvals related to exploration or developmental work may be issued notwithstanding the full review. *See NLCA sections 12.10.2(b) and 13.5.5.* Therefore, Minister Nault has encouraged the NIRB to streamline the review process and prepare and coordinate a work plan with the Nunavut Water Board (NWB). This step is required by the NLCA, which states in section 13.5.2 that there should be no “ . . . **unnecessary duplication in the review and processing of application[s].**” The Minister also goes on to state that the “. . . regulatory process can build on the results of the environmental assessment.” This direction is also consistent with the NLCA, as per section 13.5.4:

“ . . . [W]here a review is required pursuant to Article 12, the NWB shall not approve any water application that forms part of that review until Article 12 has been complied with.”

Finally, Minister Nault recommends that NIRB take into account the proponent's planned use of the Echo Bay winter road and its potential impact on residents outside of the Nunavut Settlement Area. To do this, he recommends that NIRB discuss this project with the Mackenzie Valley Environmental Impact Review Board (MVEIRB) before commencing NIRB's review; for that reason, we have copied the MVEIRB with this letter. We also request that Tahera immediately send a copy of its complete NIRB and NWB Application to the MVEIRB.

To give effect to the work plan necessitated by Minister Nault's letter, the NIRB has met with the Nunavut Water Board and held preliminary discussions on how to coordinate the review process as the NLCA requires, and at the same time, allow Nunavut Water Board's regulatory process to follow and build on the results of NIRB's Part 5 review. As a result of our meeting, we now propose the following procedures in response to Minister Nault's letter:

April 1st – June 4th, 2001:

Application Received and processing begins

At this point, parties should immediately: (1) assess the draft EIS already filed by Tahera, and, (2) read Minister's Nault's letter (copy attached) and consider which procedures are required for the Part 5 that will likely be held late this summer. NIRB and the NWB now invite all parties to attend a pre-hearing conference (PHC) the week of June 4, 2001 as further indicated below. The purpose of the PHC is, first, to comment on Tahera's draft EIS, at least in a general sense (are the alternatives sufficient; is the cumulative effects analysis complete; is there a transboundary discussion of the impacts, i.e. of the winter road as per Minister Nault's direction; and etc?). And second, we invite all parties' comments on those procedural items set out below.

June 4th – 8th :

Items for Pre-hearing Conference (PHC)

Venue is the first issue. We currently hold the belief that it is proper to hold PHCs in Cambridge Bay, and Kugluktuk (due to proximity to the project and logistics). At this June meeting, the NIRB and NWB jointly seeks your input on the proposed following items. In addressing these issues, remember that you need only attend one venue, and that your comments can be presented in writing if desired. (The deadline for written submissions preceding the PHC has not yet been set. At this time, we only need to know if this list is complete and if the items and proposed procedures are proper.) Also, while we expect you to have regard to the NIRB and NWB Rules of Practice in answering the following questions in June, we recognize that this joint process is unique and the procedural rules can vary if needed. Here are the proposed questions, issues, and procedures that could be addressed at the PHC in June:

1. Should NIRB require Tahera to be subjected to guidelines or additional EIS material? Section 12.5.2 of the NLCA allows NIRB to waive further information if in its opinion the original proposal suffices for the EIS information called for by section 12.5.2 (a)-(j). As you know, Tahera has now filed a draft EIS.
2. What issues should be dealt with at the hearing?
3. Are there parties that should be added or dropped, given Minister Nault's comments re: the Mackenzie Valley, plus in particular, the need to encourage local participation?
4. Should the actual hearing be conducted by both the NIRB and NWB? Currently, both Boards feel that the involvement of the NWB, other than in a minor way, such as sharing one hearing day on water issues, would not be proper in light of the goal that the regulatory [i.e. NWB] process "build on the results of the [NIRB] environmental assessment."
5. Should there be a site visit? By whom and when?
6. Should the actual hearing be split into two formats, i.e., a "technical" hearing, and a very *informal* "community" meeting? The focus of the latter meeting would be to foster the participation of local citizens and hopefully Elders, trappers, and others with cultural knowledge.
7. What should be the date, time, and place of the main hearing? Currently, both the NIRB and NWB feel that the venues include Cambridge Bay, Kugluktuk, and Gjoa Haven for reasons previously stated. We think Gjoa Haven is proper because of their local interest in job creation and economic issues.
8. When should documents be filed before the Public Hearing? This includes significantly the Final EIS required of Tahera.
9. What should be the order of presentation at the Public Hearing? Normally the Proponent presents first, followed by supporters, government, opponents if any, and then the proponent has a rebuttal opportunity—because the burden of proving the Application is upon the Proponent.
10. Who translates which documents and how long will this take?

Both the NIRB and NWB thank you in advance for your participation in both the upcoming PHC, and the Public Hearing that follows. We simply point out that the PHC is a meeting to discuss the draft EIS but, especially, the *procedures* for the Public Hearing that follows later in the year. Second, we point out that the purpose of the Public Hearing (following later) is to discuss the merits of Tahera's Application (should it be approved or not, and if so, with what Terms and Conditions). Third, we point out that interveners do **NOT** need to go to all venues for either the

PHC or the Public Hearing that follows. In fact, for the PHC, the **ONLY** day that the NIRB and NWB will conduct the meeting together is planned for Wednesday, June 6th, in Cambridge Bay. NIRB alone will conduct the PHC in Kugluktuk. (Of course, it is expected that the Proponent will be at both venues.) For those that cannot travel, written submissions are acceptable.

If you have any questions on these proposed procedures, please write to Executive Directors Stephanie Briscoe (NIRB) or Philippe di Pizzo (NWB) **on or before April 6, 2001**. Following your comments on whether or not these procedures are proper, we will finalize the PHC procedures and update and notify all parties of the next steps, including the deadline for written comments relative to the PHC.

Original Signed By

Elizabeth Copland
A/Chairperson, NIRB

Original Signed By

Thomas Kudloo
Chairman, NWB

cc: Board
Ministers Nault, Dhaliwal, Goodale