



Water Resources Division
Nunavut Regional Office
Iqaluit, NU X0A 0H0

July 24, 2009

NWB File #: 2AM-JER0410

Our File #: 9545-2-1.2AM.JERA

CIDMS #: 342131

Richard Dwyer
Licensing Administrator
Nunavut Water Board
PO Box 119
Gjoa Haven, NU X0A 1J0

Re: Assignment of Licence 2AM-JER0410 – Jericho Project – Benachee Resources Inc.

Further to your letter of June 18, 2009, Indian and Northern Affairs Canada (INAC) has completed a review of the Assignment application for licence 2AM-JER0410 for the Jericho Project. The application was submitted to the Nunavut Water Board by Benachee Resources Inc. on June 18, 2009.

The Nunavut Water Board requested that INAC review the assignment and also confirm in writing that the proposed Assignee has made arrangements to transfer the security obligations pursuant to the Licence to the Assignee prior to the Assignment taking effect, advising of any comments or concerns.

Attached is a Review Memorandum that may assist the Board in its consideration of the assignment of this licence.

Please feel free to contact me should you have any questions or comments. I can be reached at (867) 975-4568 or by email at Ian.Rumbolt@inac.gc.ca.

Sincerely,

Original signed by

Ian Rumbolt
Regional Coordinator



Review Memorandum

To: Richard Dwyer, Licensing Administrator - Nunavut Water Board

From: Ian Rumbolt, Regional Coordinator - Indian and Northern Affairs Canada – Nunavut Regional Office – Water Resources Division

Re: **Assignment of Licence 2AM-JER0410 – Jericho Project – Benachee Resources Inc.**

Background/History

In December 2008, the licence holder, Benachee Resources Inc., ceased operations at the Jericho Diamond Mine in Nunavut and removed all staff from the mine site. On December 12, 2008 Indian and Northern Affairs Canada intervened at the mine in accordance with the Nunavut Waters and Nunavut Surface Rights Tribunal Act. The intervention was undertaken to address environmental issues at the site, and continues as of the date of this memorandum.

On June 18, 2009 the Nunavut Water Board (NWB or Board) received a request from Benachee Resources Inc. to assign the Type 'A' Water Licence 2AM-JER0410 to a new entity also named Benachee Resources Inc., formerly known as Newco. In its call for written comment on the assignment dated June 18, 2009, the Nunavut Water board asked for comment on the assignment and requested specifically that INAC confirm in writing that the proposed assignee has made arrangements to transfer the security pursuant to the Licence to the assignee prior to the assignment taking effect.

For ease of reference, the assignor will be referred to as Old Benachee and the proposed assignee will be referred to as New Benachee.

Comments

Security:

The application for assignment takes place in the context of a transaction pursuant to an arrangement under the Companies Creditors Arrangement Act. Many elements of this transaction have already been put in place by an order of the Ontario Superior Court of Justice (Order of Justice Morawetz, dated April 28, 2009, Court File No. 08-CL-7355, hereafter "the Order").



In paragraph 15 of the Order, Justice Morawetz recognized that the Nunavut Water Board had an approval role in the assignment of the licence. However, notwithstanding Justice Morawetz's reservation of his "determination with respect to Newco's [*i.e.*, New Benachee's] entitlement to receive an assignment of the Water Licence", the Order assigned to New Benachee all of Old Benachee's "right, title and interest in and to ... letters of credit issued at the request of [Old] Benachee", though the letters are subject to certain claims, including past and future environmental liabilities (Order para. 11(a)).

Therefore it appears that the letters of credit previously furnished by Old Benachee are now assets of New Benachee. If that is the case, then the implication is that New Benachee has already furnished letters of credit to the Minister of Indian Affairs and Northern Development. These letters of credit would satisfy some portion of New Benachee's security obligations should the Water board approve the assignment application.

Upon assignment of the licence, INAC, New Benachee, and possibly the financial institutions extending the relevant letters of credit, would enter into discussions to confirm whether the existing letters of credit would continue to be the form of security furnished pursuant to section 76 of the Nunavut Waters and Nunavut Surface Rights Tribunal Act.

As indicated, Indian and Northern Affairs intervened at the Jericho mine site following the cessation of operations by Old Benachee. The costs of the work done at that site will be partially recouped by Canada out of the existing water licence security. Therefore, it is likely that New Benachee will have to replenish the existing security in the relatively near future. The Board, as per Section 76, NWNSRTA may contemplate re-evaluating the security amount.

Other:

As you are aware, the legal framework for the assignment of a water licence is found in section 44 of the Nunavut Waters and Nunavut Surface Rights Tribunal Act, which includes a requirement that the Board be satisfied that the assignment "would not be likely to result in a contravention" of the licence, Act, or regulations. It may be useful to ascertain what New Benachee's intentions may be regarding attendance and occupancy of the site as the obligations in the licence, including positive obligations, such as preventative activities, monitoring and reporting, would become New Benachee's obligations immediately upon assignment. We note that the materials submitted in the application for assignment do not appear to indicate what intentions New Benachee might have.



I trust this satisfies your enquiry into this matter. Should you have any questions or comments, please do not hesitate to contact me at (867) 975-4568 or by email at Ian.Rumbolt@inac.gc.ca.

Sincerely,

Original signed by

Ian Rumbolt
Regional Coordinator

Cc: Michael Nadler, Regional Director General, Nunavut Regional Office,
Indian and Northern Affairs Canada

Kevin Buck, Manager Water Resources Division, Nunavut Regional Office,
Indian and Northern Affairs Canada

Bernie MacIsaac, Director of Operations, Nunavut Regional Office, Indian
and Northern Affairs Canada

Peter Kusugak, Manager of Field Operations, Nunavut Regional Office,
Indian and Northern Affairs Canada