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Canada

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April 25, 2000

Nunavut Water Board
P.O. Box 119
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**BY FAX to 867-360-6369 and
BY E-MAIL to rbecker@polarnet.ca**

Attention: Mr. Thomas Kudloo, Chairperson

Dear Mr. Kudloo:

**Re: Applications by Echo Bay Mines Ltd. for renewals of Lupin and Ulu water licences;
Reply submissions**

Please accept this letter as reply submissions on behalf of the Department of Indian Affairs and Northern Development (“DIAND”) with respect to the above-noted applications. Under separate cover, DIAND itself will be providing additional reply submissions.

These submissions reply to the letter dated April 12, 2000, from Echo Bay Mines Ltd. (Bill Danyluk) to the Nunavut Water Board (Philippe di Pizzo), regarding “Reclamation Surety & Liability”. That letter is hereinafter referred to as the “Echo Bay letter”.

General comments

1. At the end of the proceedings in Kugluktuk on March 29, 2000 and in its letter of March 31, 2000, the Board gave the parties permission to make written submissions, but indicated that the submissions were to be limited to certain matters specified by the Board. The submissions set forth in the Echo Bay letter do not deal with the matters specified by the Board; they deal only with other matters. (In the fourth paragraph – i.e. the second-to-last paragraph – the Echo Bay letter refers to the closure cost estimate provided to the Nunavut Water Board by Brodie Consulting Ltd., but this reference is without substance.) Therefore, the submissions set forth in the Echo Bay letter may be regarded as improper. Nevertheless, DIAND is willing to respond to those submissions.

2. DIAND reiterates that its position with respect to security is as follows:

- a) Where the security deposit is concerned, the issue for the Board is quantum only.
The form in which the quantum specified by the Board shall be provided is a

matter to be determined between the licensee and the Minister (i.e. the Minister of Indian Affairs and Northern Development). The Board is not entitled to require a particular form of security, or to determine that a particular form of security would be acceptable.

- b) In fixing the quantum of security, the Board should have regard only to reclamation that is water-related. Land-related reclamation is a matter between Echo Bay and the landlord, and is to be addressed in the land lease rather than the water licence.
 - c) In fixing the quantum of security, the primary objective should be to ensure that the security is adequate to cover the full costs of water-related reclamation, so that the taxpayer will not be at risk of having to pay any or all of those costs.
3. Echo Bay has proposed that it provide a reclamation trust fund (“RTF”). Each of the current licences speaks both of a security deposit and of an RTF: Lupin items B(1) and B(2); Ulu items B(2) and B(4). It is unclear whether Echo Bay and the licences regard the RTF as (i) a form in which the security deposit might be provided, or as (ii) something distinct from the security deposit. Where possibility (i) is concerned, DIAND respectfully repeats that the form in which the security deposit shall or may be provided is not a matter to be determined by the Board. With respect to possibility (ii), it is questionable whether an RTF can properly be regarded as something distinct from the security which the Board may require pursuant to section 17(1) of the *NWT Waters Act*, if the licensee is directed to provide an RTF.

1st paragraph of the Echo Bay letter

“We recognize the Nunavut Water Board requires assurance that reclamation obligations will be satisfied on an ongoing basis. The preferred approach for Echo Bay is to create a trust fund to allow and require funds to be set aside as gold is produced, to guarantee the performance of reclamation obligations. Although reclamation activities are undertaken while operations are active, much of the physical work occurs at the end of mine life. This approach, funding on a graduated basis, does not burden the company with having to set aside all funds five to six years in advance of the actual closure spending and we believe the company's approach to be prudent in this regard. The NWB also will have tangible assurance of money being set aside and invested to grow for the future. Echo Bay has proposed to DIAND that US\$5 per ounce of gold produced and sold from Lupin be the basis of this trust fund. At the planned production rates for Lupin, the company would contribute approximately Can\$1.1 million to the fund each year.”

4. If Echo Bay wishes to propose to the Minister that a security deposit be provided in the form of an RTF, the Minister will give that proposal due consideration. As mentioned, the form of security is a matter within the jurisdiction of the Minister rather than the Board. DIAND notes that RTFs have been established in other transactions between DIAND and mine operators.
5. DIAND is opposed to linking either the quantum of security, or the timing of the security's posting, to production.
- Rather than having definite sums specified by the licence, such an arrangement would introduce an element of complexity into the calculation of the required security. The licence would not specify definite sums.

- A further complication would be the possibility of disagreement as to how much gold had been produced (and the Crown would lack independent information as to how much had been produced). The means of determining how much gold had been produced would have to be stated.
- In calculating the security amount according to the amount of gold produced, one would not be linking the amount to the costs of (water-related) reclamation.
- The amount generated by the calculation might not be large enough to cover the costs of water-related reclamation. The figures put forward by Echo Bay (US\$5 per ounce; C\$1.1 million per year) would not yield a security deposit that covers the water-related portion of the Brodie estimate, or even the water-related portion of Echo Bay's own estimate. In addition, production might prove to be lower than Echo Bay currently anticipates. It might even cease altogether before the currently-anticipated period of operation has elapsed.

6. "Although reclamation activities are undertaken while operations are active, much of the physical work occurs at the end of mine life.":

Here, Echo Bay acknowledges that progressive reclamation will be limited. It acknowledges that, despite progressive reclamation, much of the environmental disruption will accumulate and remain during the period of operation, and thus much of the environmental disruption will be present, and require remediation, at the end of operation.

7. DIAND is not necessarily averse to a stepped increase in the security deposit, where stepping is consistent with covering the full costs of water-related reclamation. DIAND realizes that to require the posting and maintenance of a security deposit is to impose a financial burden on a mining company. However, where there has been disruption of the environment, reclamation is a necessity; and the responsibility for reclamation, and thus the obligation to defray the costs of reclamation, belong with the mining company, not with the Canadian taxpayer. The costs of reclamation increase as the unremediated disruption increases. To ensure that the responsibility is discharged, it is desirable that at all times the security deposit be no less than the costs of (water-related) reclamation. Thus, the security deposit must either equal the full life-of-mine costs of (water-related) reclamation from the outset, or must increase as unremediated disruption increases.

8. "The NWB also will have tangible assurance of money being set aside and invested to grow for the future.":

The objective should not be simply to have *some* money set aside. The objective should be to have Echo Bay provide an amount that is commensurate with the costs of water-related reclamation.

2nd paragraph of the Echo Bay letter letter

"Echo Bay has made the assertion that upon closure, the Lupin and Ulu properties hold an inherent salvage value. We are currently conducting salvage estimates for both properties. The company maintains that such salvage value should be taken into consideration when determining the net reclamation liability at each property. As a further example in support of this position, Echo Bay would remind the NWB of our purchase for \$3 million and subsequent reclamation of the Pine Point mine, through our wholly owned subsidiary Zanford Mines Services Ltd. The equipment that was already

on site was utilized for dismantling salvageable components, demolishing scrap, and reclaiming the site. Various equipment and machinery was salvaged and used at several other Echo Bay properties including Kettle River, McCoy Cove, and Lupin. Salvage and complete reclamation of the site was accomplished within a two-year period during 1988-89. We are confident that either some salvage or mining company, if not Echo Bay itself, would be interested in the salvageable assets of the Lupin and Ulu properties for the same reasons Echo Bay paid for the Pine Point property in 1988."

9. The issue is really one of the form of security. When Echo Bay says that "...salvage value should be taken into consideration when determining the net reclamation liability" at each property"(my emphasis), Echo Bay is really making an argument not as to the amount of liability, but rather as to the form of the security which should be used to cover that liability. The liability flows from the disruption to the environment and the size of the liability is equal to the costs of remediating that disruption. Any salvage value of assets (whether assets at the site or assets away from the site) does not and will not reduce either the disruption, or the costs of remediating the disruption, and so does not and will not reduce the liability. At most that value, translated into cash through sale of the assets, might go toward paying the costs of remediating and thus discharging the liability – just as security in any other form would go toward paying the costs of remediating and discharging the liability. Since the issue is one of form, it is a matter for the Minister, rather than the Board. The Minister will give due consideration to any proposal that Echo Bay wishes to make with respect to the form of security.

10. DIAND notes the following additional concerns with respect to Echo Bay's reliance upon salvage value:

- The Crown may have no legal right to the salvageable assets.
- It is not possible to reliably predict what the circumstances will be at the time of some future failure to remediate. In particular, it is not possible to reliably predict what assets will be on site, what rights third parties may have to the assets, what the condition of the assets will be, and what the value of the assets will be.
- Whatever the true value of an asset might be, the price which the asset would fetch when sold might be considerably less. It is common for forced sales of assets (e.g. sheriff's sales) to realize substantially less than the full value of the assets, even before one subtracts from the purchase price the costs of the sale.
- Preserving and disposing of assets entail cost and inconvenience. Preserving and disposing of assets located at the Lupin or Ulu site might well entail more than considerable cost and considerable inconvenience.
- It would be inappropriate to accept unquestioningly an estimate of salvage value put forward by Echo Bay. The Crown would find itself having to perform a review on any estimate.
- Having the Crown become the owner of assets may not be a desirable consequence of realization on security. Among other things, the Crown itself may have a limited desire to see this outcome.

11. The Board has before it no evidence regarding events, transactions or circumstances at the Pine Point mine. The Echo Bay letter does not constitute evidence; it consists of submissions. DIAND has had no opportunity to test or present evidence regarding Pine Point.

12. In discussing Pine Point, the Echo Bay letter tends to blend or confuse two distinct matters: (i) covering the reclamation liability with the salvage value of assets; (ii) using equipment left on site by a departed licensee to do reclamation work.

Where matter (i) is concerned, the reference to the Pine Point case does nothing to negate any of the points made in paragraphs 9 and 10 above. It may be that assets left at Pine Point by the previous licensee did have more than negligible value, but (among other things) this affords no basis for concluding that, in the case of an Echo Bay default at Lupin or Ulu and at the time of such default, there would be marketable assets on site, or for concluding that the Crown would be entitled to sell the assets and claim the proceeds.

Where matter (ii) is concerned, the following points are relevant to a discussion of how much security (i.e. quantum, rather than form of security) should be required:

- According to Echo Bay's account, as given in the Echo Bay letter: the previous operator of the Pine Point mine left at the site equipment that was capable of being used effectively in the reclamation work that had to be done at the site; and Echo Bay was in a position to use the left equipment to do reclamation work at Pine Point because Echo Bay had become the owner of that equipment. It cannot be assumed that serviceable equipment will be left at Lupin or Ulu if and when there is a failure to remediate. Nor can it be assumed that the Crown would become the owner of any equipment that might be left.
- As indicated previously by DIAND and by Brodie, in estimating the reclamation costs, and thus the necessary quantum of security, the appropriate assumption is that the Crown will not own equipment needed for the reclamation work and will not have available to it reclamation equipment that is already on site. Instead, the appropriate assumption is that the Crown will have to pay a third party to do any (water-related) reclamation work that remains outstanding if and when the licensee becomes unable or unwilling to reclaim, and that the equipment to be used by the third party will have to be brought to the site when the third party enters the picture.

13. Echo Bay proclaims itself confident, in April 2000, that at whatever unknown point in the future, when whatever unknown circumstances exist, there will be salvageable assets and someone will want them. This avowal of confidence is not something that the NWB can bank on. It is not a concrete answer to any of the concerns identified above.

3rd paragraph of the Echo Bay letter

"A suggested alternative to the trust arrangement is a letter of credit issued by a banking institution. Letters of credit are typically issued for one year, subject to renewal and are dependent on the creditworthiness of the issuing bank and, before issuance, the creditworthiness of Echo Bay will be scrutinized. The current bearish view for the gold price and its effect on the gold industry has dampened the ability of the company, as well as others in the industry, to secure large amounts of credit to advance new or existing projects. At the moment, the availability of surety amounts is limited under letters of credit. In Echo Bay's original proposal to DIAND, made in early September 1999, a letter of credit in the amount of \$500,000 would be initially provided and this amount would not be reduced. We believe that this combined with the proposed trust fund provides the required security for our reclamation obligations."

14. DIAND reiterates that the form of security is an issue for the Minister. The Minister will give due consideration to any proposal that Echo Bay wishes to make with respect to the form of security.

15. The Board must ensure that it sets an appropriate quantum, whatever form or forms may subsequently be used to provide that quantum. In determining what is an appropriate quantum, the primary objective should be to cover the costs of water-related reclamation.

16. In referring to a proposal for a \$500,000 letter of credit, Echo Bay is referring to a proposal regarding security under a land lease.

- DIAND reiterates that security under the water licence must be concerned only with water-related matters, and must not be concerned with land-related matters.
- Any security provided pursuant to a land lease with DIAND will be provided to DIAND in its capacity as landlord and will be available for land-lease purposes. It will be not be water-licence security.
- While Echo Bay may at one point have proposed a \$500,000 letter of credit as land-lease security, that proposal may not be reflected in the arrangements ultimately agreed to by DIAND and Echo Bay, either with respect to quantum of security or with respect to form of security.

* * *

Thank you for your consideration of these reply submissions.

Yours very truly

“Lee F. Webber”

Lee F. Webber
Legal Counsel to the
Intervenor DIAND

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Attention Lyndon Kivi and Peter Cott, at 867-669-4941
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Copies will also be forwarded, to the persons listed, by E-mail