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September 12, 2005

By Fax 867-360-6369 and Email exec@nwb.nunavut.ca

Philippe di Pizzo
Executive Director
Nunavut Water Board
Box 119
Gjoa Haven, NU
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**Nunavut Water
Board**

SEP 12 2005

Public Registry

Dear Philippe:

**Lupin Class B Water Licence
Abandonment and Restoration Plan
Kinross Gold Corporation**

DIAND has received the documentation related to the application by Kinross Gold Corporation; 1. to cancel the existing class A water licence and replace it with a class B water licence and 2. final abandonment and restoration (A & R) plan for the tailings facility. Further to our meeting on Friday we have reviewed the requirement for a NTRB screening further and have come to the following conclusion.

It is DIAND's view the application to the Nunavut Water Board ("NWB") for the class B licence and the approval of the A & R plan may not proceed until the Nunavut Impact Review Board ("NTRB") has completed a screening and a review of the application if required.

DIAND view is based on the following analysis of the following provisions of the Nunavut Waters and Nunavut Surface Rights Tribunal Act ("NWSRTA") and of the Nunavut Land Claims Agreement ("NLCA")

Section 39 of the NWSRTA reads as follows;

39. (1) The Board may not issue, amend or renew a licence to use waters or deposit waste where the use or deposit, or in the case of an amendment any change to the use or deposit, or the appurtenant undertaking requires screening in accordance with Part 4 of Article 12 of the Agreement, until the Nunavut Impact Review Board has completed the screening and, where a review under Part 5 or 6 of that Article is required, issued a project certificate referred to in section 12.5.12 or 12.6.17 of the Agreement.

(2) Notwithstanding subsection (1), where an appurtenant undertaking is required to be reviewed, the Board may, before the project certificate is issued, issue, amend or renew a licence to use waters or deposit waste in relation to exploration or developmental work related to the appurtenant undertaking, provided that

(a) the use or deposit falls within Schedule 12-1 of the Agreement or can, in the judgment of the Nunavut Impact Review Board, proceed without the review; or

(b) the licence is issued, amended or renewed for an interim, short-term period.

Based on the above provision the issuance of a water licence by the NWB may not proceed until the NIRB has completed a screening if required. Article 12 of the NLCA contains the following provision;

12.3.5 Sections 12.3.1 to 12.3.4 shall apply where a land use plan has been approved pursuant to Section 11.5.9. In the absence of an approved land use plan, all project proposals other than those that fall within Schedule 12-1 shall be referred directly to NIRB for screening.

It appears on the face of things the present application fits within the definition of a project proposal contained in the NLCA. That definition reads as follows,

"project proposal" means a physical work that a proponent proposes to construct, operate, modify, decommission, abandon or otherwise carry out, or a physical activity that a proponent proposes to undertake or otherwise carry out, such work or activity being within the Nunavut Settlement Area, except as provided in Section 12.11.1;

Since the exception in Article 12.11.1 refers to project proposals located outside the Nunavut Settlement Area it has no application to this situation.

It seems clear the present application does not fit within the exception contained in Schedule 12-1 of the NLCA. That exception relates to "Water uses that do not require a public hearing under Section 13.7.3." Section 13.7.3 requires a regulation prescribing certain classes or types of water application for which a hearing need not be held. There are currently no such regulations in place.

DIAND land Administration is approving the A and R plan under its existing land lease so Land Administration does not have a trigger to send it to NIRB for screening. For the reasons above we feel NIRB must complete a screening and suggest that either the proponent or NWB forward to NIRB for screening as soon as possible.

I am in Yellowknife on other business this week and will try and contact you to discuss further. Can you ensure Bill Tilleman gets a copy of this letter as our legal counsel discussed this issue with him on Friday. Thanks.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Carl McLean', is written over a light gray rectangular background.

Carl McLean
Director of Operations

cc. Manager of Land Administration
 INAC Nunavut

 Manager of Water Resources
 INAC Nunavut

