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NUNAVUT WATER BOARD
NUNAVUT IMALIRIYIN KATIMAYINGI
OFFICE DES EAUX DU NUNAVUT

November 30, 2018

NIRB File: 03MN107
NWB File No: 2AM-MEA1526
By Email

Jamie Quesnel
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Re: Guidance of the Nunavut Water Board (NWB) Following the Decision of the Minister of Intergovernmental Affairs, Northern Affairs and Internal Trade in Relation to the Assessment of Agnico Eagle Mines Limited's Proposed Modification to the Meadowbank Gold Mine Project to Allow In-Pit Tailings Deposition

Dear Messrs. Quesnel and Vanengen:

The correspondence that follows is the Nunavut Water Board's (NWB or the Board) guidance regarding proposed next steps in the NWB's processing of a modification request received by the NWB from Agnico Eagle Mines Limited (Agnico Eagle or the Licensee) on February 23, 2018. The modification request involves a change to tailings management at the Meadowbank Gold Mine site as authorized by the NWB under Type "A" Water Licence No.: 2AM-MEA1526 (the In-Pit Tailings Disposal Modification Proposal).

On February 26, 2018, the NWB acknowledged receiving the In-Pit Tailings Disposal Modification Proposal and advised Agnico Eagle that the Board would commence the NWB's consideration of the In-Pit Tailings Disposal Modification Proposal after the Nunavut Planning Commission (NPC) and the Nunavut Impact Review Board (NIRB) had completed their respective land use planning and assessment processes. The NWB's initial direction, based on the information received with the request and the NWB's review of the existing terms and conditions of the Type "A" Water Licence No. 2AM-MEA1526 was that Agnico Eagle's request did not require an amendment of any specific terms and conditions in the Water Licence and continued to process Agnico Eagle's request as a modification to the existing Water Licence, not as an amendment.

On March 22, 2018¹ the NPC indicated that the In-Pit Tailings Disposal Modification Proposal conformed to the Keewatin Regional Land Use Plan (KRLUP), but having concluded that because the In-Pit Tailings Disposal Modification Proposal constituted a significant modification to the Meadowbank Gold Mine Project as previously assessed by the NIRB, the modification request required NIRB screening under Article 12, Section 12.4.3 of the *Agreement between the Inuit of the Nunavut Settlement Area and Her Majesty the Queen in right of Canada (Nunavut Agreement)* and Part 3 of the *Nunavut Planning and Project Assessment Act*, S.C. 2013, c. 14, s. 2 (*NuPPAA*). On this basis, the NPC referred the In-Pit Tailings Disposal Modification Proposal to the NIRB for screening.

On June 18, 2018, NIRB provided direction regarding the next steps in the NIRB's consideration of the In-Pit Tailings Disposal Modification Proposal, and determined that as set out in s. 146(1) of the *NuPPAA*, the NIRB agreed with the determination of the NPC that the In-Pit Tailings Disposal Modification Proposal should be assessed by the NIRB under Part 3 of *NuPPAA* before the modification should be allowed to proceed to the permitting stages. The NIRB also noted that the most appropriate mechanism for conducting the NIRB's assessment of the In-Pit Tailings Disposal Modification Proposal was a reconsideration of the terms and conditions of the existing Meadowbank Gold Mine Project Certificate [No. 004], under Article 12, Section 12.8.2 of the *Nunavut Agreement* and s. 112 of *NuPPAA*.

As Agnico Eagle had requested that the NIRB's assessment and the NWB's consideration of the In-Pit Tailings Disposal Modification Proposal be undertaken in a coordinated fashion, while the NIRB's assessment was on-going, the NWB invited interested parties to conduct a review of the modification request and to submit relevant comments to the NWB in August 2018. Following the receipt of the initial technical comments, additional information has been received from Agnico Eagle in response to parties' concerns, and several meetings have been held amongst the parties to resolve technical issues as the NWB's processing of the In-Pit Tailings Disposal Modification Proposal has continued. To date, comments have been provided to the NWB from the following parties:

- The Kivalliq Inuit Association (KIA);
- Crown-Indigenous Relations and Northern Affairs Canada (CIRNAC);
- Environment and Climate Change Canada (ECCC);
- Fisheries and Oceans Canada (DFO); and
- Natural Resources Canada (NRCan).

The submissions received to date have been placed on the NWB's FTP site at the following link:

[ftp://ftp.nwb-oen.ca/registry/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-MEA1526%20Agnico/3%20TECH/6%20MODIFICATIONS%20\(G\)/G1%20In-pit%20Tailings%20Deposition%20in%20Portage%20and%20Goose%20Pit/](ftp://ftp.nwb-oen.ca/registry/2%20MINING%20MILLING/2A/2AM%20-%20Mining/2AM-MEA1526%20Agnico/3%20TECH/6%20MODIFICATIONS%20(G)/G1%20In-pit%20Tailings%20Deposition%20in%20Portage%20and%20Goose%20Pit/)

¹ NPC Conformity Determination 148681 on March 22, 2018.

On August 31, 2018 the NIRB concluded the NIRB's reconsideration of the In-Pit Tailings Disposal Modification Proposal and issued the NIRB's Reconsideration Report and Recommendations.² As summarized by the NIRB:

The enclosed Reconsideration Report and Recommendations summarizes the NIRB's assessment of the potential ecosystemic and socio-economic effects of the "In-Pit Tailings Disposal Modification" Proposal associated with the approved Meadowbank Gold Mine and concludes that it should be allowed to proceed, with no revisions to the Terms and Conditions of Project Certificate No. 004 having been identified as required. The NIRB's report details the commitments made by the Proponent to ensure protection and promotion of the ecosystemic and socio-economic environment and provides direction to the Nunavut Water Board regarding issues or concerns that need to be addressed through the subsequent water licensing process for this proposal.

On November 29, 2018, the decision of the Minister of Intergovernmental Affairs, Northern Affairs and Internal Trade (the Minister) in response to the NIRB's Reconsideration Report and Recommendations was circulated by the NIRB. While largely accepting the NIRB's conclusions that the In-Pit Tailings Disposal Modification Proposal can be allowed to proceed to the licensing stage, the Minister, highlighting the importance of ecosystemic protection and of avoiding legacy issues and noting uncertainty about potential water quality issues, added the following term and condition to the NIRB Project Certificate No. 004:

The Proponent shall, prior to the deposition of tailings into the Portage or Goose Pits, file with the Nunavut Water Board (NWB) a report containing updated hydrogeological modelling addressing information gaps as per the NIRB recommendation in the Reconsideration Report and Recommendations to the satisfaction of the NWB. The Proponent shall not deposit tailings into the Portage or Goose pits until the Water Board is satisfied that the modeling addresses the specific information gaps, and that the proponent can manage any identified risks with existing designs and feasible management strategies.

With respect to the NWB's processing of the In-Pit Tailings Disposal Modification Proposal as a modification under the existing Water Licence No. 2AM-MEA1526 the Minister stated the following:

The In-Pit Tailings Disposal Modification Project will be a significant modification of the Meadowbank Gold Project. This modification would alter the manner in which the project uses water and deposits waste, and eventually interacts with surrounding waterbodies. By definition, this significant modification was not part of—and significantly alters—the project that was before the Nunavut Water Board

² NIRB, Reconsideration Report and Recommendations, In-Pit Tailings Disposal Modification, Agnico Eagle Mines Ltd., NIRB File No.: 03MN107, August 31, 2018.

and the then Minister of the Department of Indian Affairs and Northern Development when the water license [sic licence] was issued on July 10, 2008. As such, the current licence does not authorize this undertaking, and I suggest that an amendment process is required under the Nunavut Water and Nunavut Surface Rights Tribunal Act.

As part of the integrated regulatory system established under the *Nunavut Agreement* and the relevant legislation, the NWB recognizes that the assessment/reconsideration process of the NIRB, including the Minister's decision and direction in response to the NIRB's reconsideration, not only inform the NWB's subsequent licensing processes, but also acknowledges that ultimately the terms and conditions in water licences must be consistent with and implement the terms and conditions in the Project Certificates issued by the NIRB for a given a project (as established under Article 12, Section 12.9.1 of the *Nunavut Agreement* and s. 136 of the *NuPPAA*). As the NWB recognizes that implementing the Minister's additional term and condition in Project Certificate No. 004 may result in potential amendments to the existing modelling and monitoring requirements of Water Licence No. 2AM-MEA1526 and also noting the Minister's conclusion that, in the Minister's opinion the changes proposed under the In-Pit Tailings Disposal Modification Proposal are not within the scope of the current Water Licence, the NWB acknowledges that it is now necessary for the continued processing of Agnico Eagle's In-Pit Tailings Disposal Modification Proposal to be conducted as an amendment to existing Water Licence No. 2AM-MEA1526 rather than as a modification.

However, the NWB also recognizes that considerable technical review of the In-Pit Tailings Disposal Modification Proposal has already taken place, with numerous opportunities for comment, reply to comments and resolution of outstanding technical issues occurring since the In-Pit Tailings Disposal Modification Proposal was received by the NWB in February 2018. Consequently, the NWB expects to conduct the continuation of the Board's consideration of the In-Pit Tailings Disposal Modification Proposal as an amendment application in accordance with an expedited review schedule and proposes to bring all of the material already filed in respect of the NWB's consideration of the In-Pit Tailings Disposal Modification Proposal as a modification into the NWB's consideration of the Proposal as an amendment to the Water Licence.

As the NWB recognizes that it is in the interest of all parties to avoid duplication and delay in the licensing process going forward, the NWB is proposing the following:

- The NWB will host a short teleconference (60-90 minutes) commencing at 9:00 am Mountain time on December 5, 6 or 7 (the date to be confirmed following consultation with parties) to discuss an expedited process for the NWB's consideration of an amendment application, including process and timelines;
- The NWB requests that Agnico Eagle, all interveners and any other interested parties, indicate to the NWB by **4:00 pm on Monday, December 3** their preferred date for the proposed teleconference and also confirm their attendance;
- An agenda for the call and confirmation of the call in details and date of the teleconference will be circulated by the NWB to parties on Tuesday, December 4; and

- By **December 14, 2018**, Agnico Eagle is required to file with the NWB an application for amendments to Water Licence No. 2AM-MEA1526 to authorize the In-Pit Tailings Disposal Modification Proposal and implement the additional term and condition added by the Minister to NIRB Project Certificate No. 004.

The Board recognizes that the proposed timelines are very short, but notes that these initial discussions will be confined to a discussion of **process only** and will not involve discussion of the substance of the In-Pit Tailings Disposal Modification Proposal. The NWB appreciates parties taking all reasonable steps to accommodate the timelines set out above.

If you have any questions or require further direction with respect to this matter, please contact Assol Kubeisnova, Technical Advisor, at (867) 360-6338 or via e-mail at assol.kubeisnova@nwb-oen.ca or Karén Kharatyan, Director of Technical Services, at (867) 360-6338 or via e-mail at karen.kharatyan@nwb-oen.ca.

Regards,

Richard Dwyer
Manager of Licensing
Nunavut Water Board

cc. Meadowbank distribution list