

March 5th, 2004

Ms. Stephanie Briscoe
Executive Director
Nunavut Impact Review Board
P.O. Box 2379
Cambridge Bay, Nunavut
X0B 0C0

BY FAX

Dear Ms. Briscoe:

RE: Construction of a Single Diesel Fuel Tank at the Meadowbank Property

I provide legal advice to Cumberland Resources Limited.

Cumberland Resources Ltd. (Cumberland) wishes to construct a single five million litre (5M litre) fuel tank at its Meadowbank property in the Kivalliq Region of Nunavut. We are seeking the Nunavut Impact Review Board's (NIRB) endorsement of this plan.

We are aware that section 12.10.1 of the Nunavut Land Claims Agreement (NLCA) prohibits the issuance of licences or approvals which would be necessary in order for a proposed project to proceed once a Part 5 review has been ordered by the Minister of INAC. This prohibition is, however, subject to two exceptions set out in section 12.10.2. We believe that Cumberland's plan to build the fuel tank should qualify for an exception under either paragraph 12.10.2 (a) or (b).

The construction of the new fuel tank is necessary to support current exploration activity at the Meadowbank site. The plan to construct this tank has no relationship to Cumberland's Meadowbank Mine development proposal, currently undergoing a Part 5 review by NIRB.

The background facts and rationale for Cumberland's request are set out below. We conclude with a discussion of the applicable NLCA provisions.

* Practising law through the John Donihee Professional Corporation.

Background and Rationale for the New Tank:

Cumberland has been involved in exploration at the Meadowbank site since 1993 and in the last few years its exploration activities have both expanded and intensified. The need for fuel to support these activities has resulted in a step-wise expansion of the fuel storage requirements at the site. Today, there are eight small tanks located at the Meadowbank property with an approximate total volume of five hundred thousand (500,000) litres.

Exploration plans for 2004 call for new expenditures of \$4.7 million dollars at Meadowbank. This work is part of Cumberland's commitment to refining its understanding of the resource and to expanding potential resources at the site. Cumberland will need to increase its fuel storage capacity this year in order to support this exploration activity. As a consequence, both the configuration and total capacity of the fuel storage vessels at the Meadowbank site have been reviewed and Cumberland is seeking NIRB's endorsement for the construction of a single 5M litre new tank to hold all of its fuel.

Cumberland's exploration activities take place on Inuit Owned Lands (IOL) under an existing land use licence issued by the Kivalliq Inuit Association (KIA) which has been screened by NIRB. Cumberland renews this licence for the use of IOL annually.

There is no direct linkage between this proposal to construct a single tank to support exploration and Cumberland's development proposal. A final decision to develop the Meadowbank project has not yet been made and development needs are not driving the proposal for the new tank. Cumberland has no plans to undertake any activity associated with its mine development proposal until NIRB's Part 5 review has been successfully completed. This means that Cumberland will commit to storing only as much fuel as is needed for exploration activities, plus a reasonable contingency supply, in the new tank.

As has been indicated in project description documents filed with NIRB, the development of a mine at the site would require more than 60 million litres of fuel with associated storage capacity. The proposal described herein is only intended to support exploration activities, to rationalize the fuel storage arrangements on site and reduce overall environmental risk. The large scale development proposal being reviewed by NIRB could not proceed on the basis of this proposed new tank.

NIRB should also be aware that the KIA has encouraged Cumberland to construct a single large volume tank for fuel in a suitable location which is bermed and lined in order to reduce risk to the environment on IOL at the site. KIA supports this 5 M litre tank construction proposal. Cumberland is of the view that a single large tank will reduce the risk of spills attendant on the use of a series of smaller tanks. These smaller tanks are double walled but they are not located in bermed and lined enclosures. In our view the risk of fuel spills can be reduced by moving to a single larger container. This 5M litre container will have the capacity to support all of Cumberland's foreseeable exploration activities. Once the new tank is constructed,

Cumberland can decommission and clean up the areas around the eight smaller tanks.

Thus, the proposed new tank is not directly linked to the development under review. It is being proposed to support ongoing exploratory activity that is not caught up in the NIRB Part 5 process. The new tank will, we suggest, reduce the risk to the environment on IOL and its construction is being supported by the KIA.

The Applicable NLCA Provisions:

Section 12.10.2 of the NLCA reads as follows:

12.10.2 Notwithstanding Section 12.10.1, where a project proposal has been referred for review pursuant to Part 5 or 6, approvals or licences for exploration or development activities related to that project may be issued if:

- (a) the activity falls within Schedule 12-1; or
- (b) the activity can, in the judgement of NIRB, proceed without such a review.

It is clear, when section 12.10.1 and 12.10.2 are read together, that the drafters of the NLCA did not intend to stop all exploration or development activity related to a project undergoing Part 5 review cold. Cumberland made earlier requests to NIRB for approval of new tank construction both at the Meadowbank site and in Baker Lake. Those requests caused some difficulties because the development project had not yet been referred for a Part 5 review and because of issues related to splitting of project activities by application for separate approval of a tank in Baker Lake.

Those concerns are no longer relevant. The development has now been referred and is subject to a Part 5 review and this request does not include any construction of a tank in Baker Lake.

We submit that in these circumstances section 12.10.2 is clearly applicable and we ask that NIRB give consideration to the application of that section to this request. It should be noted that construction of the new tank will have to take place in the summer of 2004 if it is to be useful to Cumberland's ongoing exploration at the Meadowbank site. We therefore also respectfully request that NIRB do whatever it can to expedite consideration of this request.

Section 12.10.2 provides for two exceptions to section 12.10.1. The question which must be answered to decide on Cumberland's request is whether the proposal for the new tank qualifies under either of paragraphs 12.10.2 (a) or (b).

Cumberland has investigated the regulatory requirements for the construction of the new tank and we submit that our proposal can qualify for an exemption under either of these paragraphs.

Paragraph 12.10.2 (a):

Cumberland is continuing its exploration activities at the Meadowbank site under an existing land use licence issued by the KIA. The tank construction and operation will not require a water licence or an amendment to the existing licence. To the best of our knowledge, we are unaware of any new or additional permit or authorization which is required for the construction of the tank. The renewal of the land use licence required by KIA is not a “permit or authorization from the Government of Canada or Territorial Government”.¹

We have been informed that the plans for the tank must be reviewed by the Government of Nunavut’s Fire Marshall to ensure that it meets the appropriate code requirements. There is no permit or formal authorization associated with this review and it is Cumberland’s position that the Fire Marshall’s review for code compliance is not an “authorization” as that term is used in the context of Schedule 12-1.

Since no permits or authorizations are required for the construction of the tank, it appears that the construction is exempt from screening under Schedule 12-1 of the NLCA and that the construction can simply go forward, subject to NIRB’s endorsement, as set out in paragraph 12.10.2 (a).

Paragraph 12.10.2 (b):

Even if we are wrong in our interpretation of paragraph 12.10.2 (a) or we have missed a permit or authorization in our regulatory review, we suggest that this is a case where NIRB should exercise its judgement and allow the tank construction to take place without inclusion in the Part 5 review and subject only to regulatory requirements (if any).

As we have indicated above, the new tank is not directly related to the overall development of the Meadowbank project. Approval of this tank construction is necessary in support ongoing exploration activities which will provide economic benefits to the Kivalliq region this summer. Furthermore, the new tank will reduce the risk of environmental harm to IOL and it is supported by the KIA. The construction of this single tank does not constitute an instance of project splitting.

Cumberland respectfully suggests that this is a case where NIRB should exercise its judgement and approve the proposed tank construction pursuant to its authority under 12.10.2 (b) of the NLCA and subject to any existing regulatory requirements.

Conclusion:

Cumberland respectfully requests that NIRB endorse the construction of a single 5 M litre tank at the Meadowbank site in order to support ongoing exploration activities and to reduce the risk of fuel spills on IOL and to the environment.

¹ Schedule 12-1, section 1 reads: “Land use activities not requiring a permit or authorization from the Government of Canada or Territorial Government.”

If you have any questions or we can provide any additional information to assist NIRB in its review of this request, please feel free to contact me directly.

Yours truly,

Original Signed By:

John Donihee

cc. Kerry Curtis, CEO Cumberland Resources Ltd.
Craig Goodings, Manager Environmental and Regulatory Affairs
Luis Manzo, Lands Manager Kivalliq Inuit Association