



NIRB File No.: 03MN107

DFO File No.: NU-03-0191

NWB File No.: 2AM-MEA0815

KivIA Production Lease No.: KVPL308D280

AANDC File No.: 5510-5-3

EC File No.: 4703 001 015 120

NRCAN File No.: F74222

October 21, 2013

The Honourable Gail Shea
Minister of Fisheries and Oceans
c/o Elizabeth Patreau
Senior Fish Biologist
Fisheries and Oceans Canada
P.O. Box 358
Iqaluit NU X0A 0H0

Sent via email: elizabeth.patreau@dfo-mpo.gc.ca

Re: Application Exempt from the Requirement for Screening pursuant to Section 12.4.3 of the NLCA: Agnico-Eagle Mines Ltd.'s Application to Amend its Fisheries Act Authorizations Nos. NU-03-0190 and NU-03-0191.3 for the Meadowbank Gold Project, Kivalliq Region

Dear Elizabeth Patreau:

On July 30, 2013 the Nunavut Impact Review Board (NIRB or Board) received correspondence from the Government of Canada's Northern Projects Management Office (NPMO) indicating that Agnico Eagle Mines Ltd. (AEM) recently requested amendments to its existing *Fisheries Act* Authorization NU-03-0190 – All Weather Private Access Road (AWPAR) and *Fisheries Act* Authorization NU-03-0191.3 for the Main Mine Site. On July 31, 2013 the NIRB received clarification regarding the type of amendments requested by AEM from Fisheries and Oceans Canada (DFO) and on September 6, 2013, DFO issued correspondence to the NIRB requesting advice on the proposed amendments.

PROCESS OVERVIEW

The NIRB Project Certificate [004] issued for the Meadowbank Gold Project on December 31, 2006 was the product of the Board's extensive public review of the potential impacts associated with the project proposal filed by the original proponent of the project, Cumberland Resources

Ltd. in March 2003. The NIRB's Review provided opportunities for public input through written submissions, community meetings and participation in a Public Hearing. The scope of the NIRB's Review was based on the project as proposed in 2003 and as reviewed by the Board between 2003 and 2006. To determine the impact assessment requirements applicable to AEM's current amendment requests, the NIRB had to consider two possible avenues under the Nunavut Land Claims Agreement (NLCA).

If the NIRB determined that the proposed amendments were within the scope of the Meadowbank Gold Project as previously reviewed by the Board and as addressed by the existing terms and conditions of the NIRB Project Certificate [004], the amendments would be exempt from the requirement for screening by the NIRB as set out in Article 12, Section 12.4.3 of the NLCA:

12.4.3 Any application for a component or activity of a project proposal that has been permitted to proceed in accordance with these provisions shall be exempt from the requirement for screening by NIRB unless:

- (a) such component or activity was not part of the original proposal; or*
- (b) its inclusion would significantly modify the project.*

Alternatively, if the NIRB determined that the amendment requests represent a significant change to the project as previously reviewed, the Board would then evaluate whether the significant changes to the project warrant a formal reconsideration of the terms and conditions of the existing NIRB Project Certificate [004] pursuant to Section 12.8.2 of the NLCA:

12.8.2 NIRB may on its own account or upon application by a DIO, the proponent, or other interests, reconsider the terms and conditions contained in the NIRB certificate if it is established that:

- (a) the terms and conditions are not achieving their purpose;*
- (b) the circumstances relating to the project or the effect of the terms and conditions are significantly different from those anticipated at the time the certificate was issued; or*
- (c) there are technological developments or new information which provide a more efficient method of accomplishing the purpose of the terms and conditions.*

Given the integrated regulatory process established by the NLCA Article 12, Sections 12.10.1, DFO cannot approve the issuance of an amended authorization until the NIRB has confirmed that the assessment provisions of Article 12 of the NLCA have been satisfied.

PROCEDURAL HISTORY

AEM has applied for amendments to its *Fisheries Act* Authorizations NU-03-0190 and NU-03-0191.3 as issued by DFO for the Meadowbank Gold Project. Specifically, it is the NIRB's understanding that AEM has requested an amendment to the monitoring frequency as required by its *Fisheries Act* Authorization NU-03-0190 and a reduction to the existing letters of credit held by the Government of Canada from the currently held \$25.675 million to \$8.6 million as required by its *Fisheries Act* Authorization NU-03-0191.3.

The complete amendment application is available online from the NIRB's public registry at the following location:

<http://ftp.nirb.ca/03-MONITORING/03MN107-MEADOWBANK%20GOLD%20MINE/06-AUTHORIZATIONS/Fisheries%20and%20Oceans%20Canada/>.

On September 26, 2013 the NIRB invited interested parties and agencies with jurisdictional authority and/or licences and approvals associated with the Meadowbank Gold Project to provide their comments to the Board with respect to AEM's proposed Authorization NU-03-0190 – AWPARG and Authorization NU-03-0191.3 on or before October 10, 2013. The Board requested that parties provide their views on the following points in particular:

- Whether or not the proposed amendments are within the scope of the project as originally reviewed by the NIRB in 2006 and as approved under the existing terms and conditions of the NIRB Project Certificate [004];
- Whether or not parties support the proposed decrease in the amount of credit held by the Government of Canada, with justification provided for the position taken;
- Whether or not the proposed amendments or the proposed decrease in amount of credit to be held trigger a requirement for a formal reconsideration of the terms and conditions of the NIRB Project Certificate [004] as set out in NLCA Sections 12.8.2 (a), (b), or (c) and, if so, which of the circumstances supporting reconsideration under the NLCA provides the basis for the reconsideration;
- Whether the proposed project amendments are likely to arouse significant public concern and, if so, describe the basis for the concern;
- Whether, if a reconsideration of Project Certificate [No. 004] is triggered under Section 12.8.2 of the NLCA, there are specific terms and conditions that should be reconsidered;
- Whether parties require additional information to support the consideration of the proposed amendment applications and the Board's request for comments; and
- Any matter of importance to the Party related to the amendment applications as presented by AEM that should be considered by the NIRB in making its determination.

In addition, the NIRB also requested that DFO provide comment with respect to the following:

- In its opinion, would the requested amendments alter the initial impact assessment as presented throughout the NIRB's Review of the Meadowbank project from a fish and fish habitat perspective, and specifically, is DFO able to confirm that Authorization NU-03-0190 conditions 5.2.1¹ and 5.2.3² can be met with the proposed change of monitoring to every 5 years instead of every other year as originally required in the *Fisheries Act* Authorization;
- Confirm that AEM has sufficiently proven the successful utilization by Arctic grayling of all compensation features during the spawning and nursery periods (5.2.1);

¹ 5.2.1 *The stability and successful utilization of all compensation features shall be assessed during the spawning and nursing period for Arctic grayling (*Thymallus arcticus*) according to the schedule in 5.2 above.*

² 5.2.3 *If at any time during the monitoring period, compensation features are not functioning as intended, measures shall be identified to reduce the risk of future failure and additional compensation shall be created to meet the No-Net-Loss guiding principle using an adaptive management approach.*

- Describe DFO's expectations of AEM to monitor compensation features during operation periods when no monitoring would be conducted to ensure that these are functioning as intended (5.2.3); and
- For condition 5.2.2³, confirm that AEM has proven that the crossing structures along the AWPAP have not adversely affected upstream and downstream fish migrations.

On or before October 15, 2013, the NIRB received comment submissions from the following interested parties:

- *Kivalliq Inuit Association*
- *Aboriginal Affairs and Northern Development Canada*
- *Fisheries and Oceans Canada*

All comments provided to the Board regarding this proposed amendment can be viewed on the NIRB's online public registry and are available at the following link:

<http://ftp.nirb.ca/03-MONITORING/03MN107-MEADOWBANK%20GOLD%20MINE/06-AUTHORIZATIONS/Fisheries%20and%20Oceans%20Canada/04-COMMENTS/>.

NIRB'S REVIEW OF THE AMENDMENT REQUEST

The NIRB has reviewed the current amendment requests and has the following suggested amendment in wording (*in bold*) for Authorization NU-03-0190 condition 5.2 as currently requested by AEM:

- 5.2 The approved Monitoring Plan shall be implemented annually for the years from 2007 to 2011; and 2013; and every five years thereafter (starting in 2015) until ***decommissioning***. ***At decommissioning, the Monitoring Plan shall be implemented every other year thereafter*** until 2030 which is following upon water crossing decommissioning and restoration completion works.

The NIRB has also reviewed Authorization NU-03-0190 condition 5.2.4 and has the following suggested amendment in wording⁴ (*in bold and strikethrough*):

- 5.2.4 The Proponent shall engage the local Hunter Trapper Organization(s) (***HTOs***) in the development, implementation and reporting of annual creel surveys within the water bodies affected by the Plan and report ~~according to the schedule in 5.2 above~~ ***the results to the local HTO on an annual basis***.

DFO, in its September 6, 2013 letter, responded to AEM's request regarding a reduction in the existing letter of credit for fish habitat compensation stating that the existing letter of credit for fish habitat compensation will not be reduced. DFO's decision was based on several points and

³ 5.2.2 *Monitoring to assess if the installation of crossing structures has adversely affected upstream and downstream fish migration according to the schedule in 5.2 above.*

⁴ Please note that FA condition 5.2.4 is related to NIRB Project Certificate [004] Condition #51 and reads: "Cumberland shall engage the HTOs in the development, implementation and reporting of creel surveys within waterbodies affected by the Project to the GN, DFO and local HTO"

described within their letter. The NIRB supports the DFO's assessment and its response as communicated to AEM.

NIRB ASSESSMENT AND DECISION

After a thorough assessment of all materials provided to the Board and comments received, the NIRB is of the understanding that the proposed amendment requests by AEM do not change the general scope of the Meadowbank Gold Project as previously reviewed by the Board, and that the exceptions noted in NLCA 12.4.3(a) and (b) do not apply. Therefore, these amendment requests are exempt from the requirements for screening pursuant to Section 12.4.3 of the NLCA and the amendment activities therein remain subject to the terms and conditions of the NIRB Project Certificate [004].

Upon receipt of additional clarification from DFO, the NIRB will give further consideration as to whether any additional monitoring or reporting requirements are necessary in light of the proposed amendment as per Sections 12.7.1 and 12.7.2 of the NLCA.

Should you have any questions or require clarification related to the NIRB's monitoring program for the Meadowbank Gold Project, please contact Sophia Granchinho, Senior Technical Advisor and Monitoring Officer at (867) 793-4633 or sgranchinho@nirb.ca.

Sincerely,



Ryan Barry
Executive Director
Nunavut Impact Review Board

cc: Stéphane Robert, Agnico-Eagle Mines Ltd.
Kevin Buck, Agnico-Eagle Mines Ltd.
Luis Manzo, Kivalliq Inuit Association
Johann Pélage, Northern Projects Management Office
Meadowbank Distribution List